Supreme Court, U. S.
FILED
AUG 30 1980
MICHAEL RODAK, JR., CLERK

80-327

No.

IN THE

Supreme Court of the United States

October Term, 1980

VALLEY FORGE CHRISTIAN COLLEGE,
Petitioner,

and

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, and E. MALLARY BINNS,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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QUESTIONS PRESENTED

1. If pursuant to Act of Congress the federal government transfers to a church-related college personal and real property which is "surplus" to governmental requirements, will a citizen-separationist or any citizen, *without* taxpayer status, have standing to challenge the transfer as action which violates the Establishment Clause?

2. Does the alleged violation of a citizen's right ". . . to a Government that does not establish religion",[1] satisfy the injury in fact requirement of standing, where the citizen fails to meet the criteria for taxpayer standing mandated by this Court in *Flast v. Cohen*, 392 U. S. 83 (1968)?[2]

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1. *Americans United for Separation of Church and State, et al. v. United States Department of Health, Education and Welfare, et al.*, 619 F. 2d 252, 254 (3d Cir. 1980) (A. 1).

2. The caption of this case identifies the names of all parties to the proceeding in the United States Court of Appeals for the Third Circuit.

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OPINIONS

The December 15, 1978 order of the District Court granting Petitioner's motion for summary judgment is unreported. (A42)

The three opinions of the United States Court of Appeals for the Third Circuit (majority opinion by Adams, J., concurring opinion by Rosenn, J., dissenting opinion by Weis, J.) are reported as: *Americans United for Separation of Church and State, Inc., et al. v. United States Department of Health, Education and Welfare, et al.* at 619 F. 2d 252 (3d Cir. 1980) (A1)

JURISDICTION

On April 8, 1980, the United States Court of Appeals for the Third Circuit rendered the judgment which petitioner seeks to have reviewed. On June 3, 1980, that Court denied petitioner's petition for rehearing *en banc*. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U. S. Const. Art. I, § 8, Cl. 1 A49
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Federal Property and Administrative Services Act of 1949, 40 U. S. C. § 471 et seq. (1970) A50, 51

STATEMENT OF THE CASE

In 1973, the Secretary of Defense ordered the closing of a military hospital near Valley Forge, Pennsylvania, having declared the facility "excess" to the requirements of all military branches of the Defense Department. Thereafter, the property was reported as "excess" to the General Services Administration ("GSA") which offered the facility to all other federal government agencies in accordance with the procedures prescribed by the Federal Property and Administrative Services Act of 1949 ("Federal Property Act").[3] No other agency indicated a need for the facility whereupon GSA declared the property "surplus"[4] to the requirements of the federal government. The hospital property was assigned to the Department of Health, Education and Welfare ("HEW") for disposal to either a health or an educational institution in accordance with procedures prescribed by the Federal Property Act.[5]

Several health or educational institutions, some public, others private applied to become transferees of portions of the tract. Following extensive studies done by local and federal agencies of the merits of these applicants, the Petitioner, Valley Forge Christian College, was selected to receive a portion of the real estate and some personal property formerly utilized by the military hospital. Petitioner, which is affiliated with the Assemblies of God Church, had been conducting its educational activity at a facility it had outgrown.

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3. 40 U. S. C. § 471 *et seq.* (1970) (A. 50).

4. "Surplus" is defined in regulations promulgated under the Federal Property Act and ". . . when used with respect to real property means any excess real property not required for the needs and the discharge and the responsibilities of all Federal Agencies as determined by the Administrator or his designee." 45 CFR Part 12.

5. 40 U. S. C. § 484(k)(1) (A. 50).

In accordance with the Federal Property Act,[6] HEW granted Petitioner a "public benefit allowance" pursuant to which it must earn the right to use the property over a period of thirty years through a bestowal of public benefits in conducting its educational program.

In August, 1976, HEW conveyed a portion[7] of the hospital property to Petitioner. Subsequently, Petitioner relocated its campus to the property and rehabilitated the facility at substantial cost. For the last four years, Petitioner has continuously occupied and maintained the facility as a college.

This action was instituted against the Petitioner by the filing of an amended complaint on July 12, 1977.[8] The Respondents and plaintiffs in the District Court are Americans United for Separation of Church and State, Inc., a non-profit corporation, and four individuals who are employed by the organization. Jurisdiction of the District Court is founded upon 28 U. S. C. § 1331, since the Respondents alleged that their claim arose under the First Amendment.

The amended complaint challenged HEW's transfer of the property on allegations that Petitioner's sectarian[9]

6. 40 U. S. C. § 484(k)(1)(C) (A. 51).

7. Petitioner received approximately 77 acres with buildings from a tract consisting of approximately 180 acres which had been utilized by the military hospital until its closure three years before.

8. The complaint was originally filed in the United States District Court for the District of Columbia naming as a defendant only HEW. It was transferred, apparently with the agreement of Respondents and HEW, to the United States District Court for the Eastern District of Pennsylvania on March 24, 1977. An amended complaint filed July 12, 1977 named Petitioner as a co-defendant with HEW.

9. Judge Adams wrote: "The Valley Forge Christian College is admittedly sectarian." *Americans United, supra,* at 253 (A. 3). The "admission" to which the Court refers is certainly not one of

character disqualified it under the Establishment Clause as a transferee of government property. Respondent sought a declaration that the transfer violated the First Amendment, that the transaction be rescinded, that HEW be enjoined from making the transfer and that Respondents be awarded their attorneys' fees and costs. (Amended Complaint)

Following the completion of discovery,[10] HEW moved to dismiss the complaint and Petitioner moved for summary judgment. Both motions sought dismissal of the action on the grounds that Respondents lacked standing to sue. The District Court, in an unreported order dated December 15, 1978 (A. 42), granted the parties' motions and dismissed the complaint.

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9. (Cont'd.)

the Petitioners. Since the complaint was dismissed prior to a trial on the merits, the question of whether or not this institution would or would not qualify under the First Amendment to be a transferee of surplus property has never been litigated. For a college to be "sectarian" or "church-related" is hardly co-extensive with "religion" as used in the Establishment Clause. See *Roemer v. Board of Public Works of Maryland*, 426 U. S. 736 (1976); *Hunt v. McNair*, 413 U. S. 734 (1973); *Tilton v. Richardson*, 403 U. S. 672 (1971).

10. Respondents' interrogatories to HEW and to Petitioner were answered. Petitioner's interrogatories and requests for production of documents addressed to Respondents were answered. Petitioner took the depositions of the individual Respondents, Andrew Leigh Gunn, Edward E. Doerr, Giole Settembrini and E. Mallory Binns. The depositions were transcribed and filed. Affidavits of Lois M. Sparklin, an employee of HEW, William J. Sheehan, Executive Director of the President's Economic Adjustment Committee and the Director of the Office of Economic Adjustment, Office of the Secretary of Defense; and Richard Coffman, an appraiser, were filed in connection with Petitioner's motion for summary judgment. The foregoing in addition to the pleadings constitute in the main the record before the District Court and the Court of Appeals.

Respondents appealed to the United States Court of Appeals for the Third Circuit and on April 8, 1980 that Court filed its three opinions (majority, concurring and dissent) and by vote of two to one reversed the District Court and directed that the action be remanded. On June 3, 1980, the Third Circuit denied Petitioner's petition for a rehearing *en banc*. This petition for a writ of certiorari followed.

ARGUMENT

The Majority Has Embraced a Concept of Standing Presented to the Court in 1968 and Not Accepted by It at That Time, or Since. If the Basic Principles of Standing Prove to Be Unworkable or Undesirable, Then It Is the Supreme Court and Not a Court of Appeals That Has the Right to Change Them. Weis, J. Dissenting, Americans United, 619 F. 2d 252, 271 (3d Cir. 1980). (A. 41)

A Court of Appeals has repudiated *Flast v. Cohen*,[11] formulated a unique, unheard of and unknown test authorizing citizen standing for constitutional litigation, ignored five other opinions of this Court [12] and placed itself in conflict with at least one other circuit.[13] The judgment of the Third Circuit deserves review by this Court at the behest of Petitioner, a tiny college of about 500 students [14] threatened with the loss of its campus after four years of happy occupancy. Petitioner's "wrongdoing" was to apply, with other applicants, for a piece of surplus government property under a procedure authorized by federal statute. Until this lawsuit, the Federal Property Act had never been challenged in its thirty-one year history; none of the hundreds and hundreds of

11. 392 U. S. 83 (1968).

12. *Simon v. Eastern Kentucky Welfare Rts. Org.*, 423 U. S. 26; *Warth v. Seldin*, 422 U. S. 490 (1975); *Schlesinger v. Reservists Committee to Stop the War*, 418 U. S. 208 (1974); *U. S. v Richardson*, 418 U. S. 166 (1974); *Sierra Club v. Morton*, 405 U. S. 727 (1972).

13. *American Jewish Congress v. Vance*, 575 F. 2d 939 (D. C. Cir. 1978).

14. This was the student enrollment for the academic year (1977-1978). Defendant Valley Forge Christian College Answers to Plaintiffs Interrogatories, No. 24.

surplus property transfers to health and educational institutions (including those which were church-related) had ever been questioned.

Petitioner has been fighting for its life, strangled by litigation: first, as a defendant in a case of first impression in the District Court, and now as the unwilling victim of a fundamental change in standing jurisprudence, having been ordered by the Circuit Court to proceed to a trial in the District Court *unless* this Court will intercede.

The amended complaint asserted that each of the individual Respondents were taxpayers who challenged the transfer of surplus government property as violative of the Establishment Clause. (Amended Complaint ¶¶ 3-6) This Court's heralded decision in *Flast* permitted taxpayers access to a federal court to challenge the constitutionality of a congressional exercise of the power to tax and spend provided (a) that the taxpayer could demonstrate a logical link between his taxpayer status and the type of legislative enactment challenged and (b) that he could establish a nexus between taxpayer status and the precise nature of the constitutional infringement alleged. *Flast* required that the legislation challenged be a congressional exercise of the taxing and spending power granted by Art. I, § 8 of the Constitution. *Flast* and subsequent opinions of this Court have explained that the taxpayer can demonstrate the existence of a logical connection between taxpayer status and the constitutional provision assailed only by statutes whose constitutional source was the taxing and spending power of Art. I, § 8. The Federal Property Act challenged by these Respondents is the exercise of the power granted to Congress under Art. IV, § 3, Cl. 2, referred to as the "Property Clause." (A. 49) That clause authorizes Congress to pass appropriate legislation respecting the disposition of federal property. The Federal Property Act of 1949 is

undeniably a congressional exercise of its power granted under the property clause and *not* of its taxing and spending power. *Van Brocklin v. Tennessee,* 117 U. S. 151 (1886); *Ashwander v. T. V. A.,* 297 U. S. 288 (1936); *Alabama v. Texas,* 347 U. S. 272 (1954) and *Kleppe v. New Mexico,* 426 U. S. 529 (1976).

This Court has consistently applied *Flast* in denying prospective plaintiffs the right to utilize the federal courts to complain about congressional action whose power source is not the taxing and spending clause. See, *U. S. v. Richardson,* 418 U. S. 166 (1974) (standing denied because legislation in question was enacted pursuant to Art. I, § 9, Cl. 7) and *Schlesinger v. Reservists Committee to Stop the War,* 418 U. S. 208 (1974) (standing denied where the taxpayer's challenge was to action under the "Incompatibility Clause" of Art. I, § 6, Cl. 2); see also, *Frothingham v. Mellon,* 262 U. S. 447 (1923) (denying standing to a taxpayer challenging legislation empowered by the Fifth and Tenth Amendments). In fidelity to these precepts, the District Court dismissed the complaint.

The Court of Appeals agreeing that the Respondents failed the *Flast* criteria and hence lacked taxpayers' standing,[15] nevertheless reversed, holding ". . . the Establishment Clause creates in each citizen a 'personal constitutional right' to a Government that does not establish religion." *Americans United, supra* at 265. (A. 29) In so doing, Judge Adams observed that this case presented the Court below with the opportunity to answer:

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15. The majority wrote:

We do not dispute the district court's determination that under the law as it presently exists, individuals asserting *solely* their interest as taxpayers have standing to challenge only exercises of the taxing and spending power, and not actions authorized by other constitutional provisions. *Americans United, supra,* 260 (A. 18).

> . . . the novel and important question posed by Justice Fortas in *Flast* which the Court did not reach and thus did not decide: whether the vital interest of a citizen in the establishment issue, without reference to his taxpayer's status, would be acceptable as a basis for [standing to bring] this [kind of] challenge. *Americans United, supra* at 262. (A. 21-22)

The Court of Appeals' response to this question is remarkable:

> "An allegation of injury in fact to an interest protected by the Establishment Clause is *all* that is required for standing." (Emphasis supplied) *Americans United, supra* at 265. (A. 28)

To the complex literature of standing, already overburdened with formulae and criteria, the Circuit Court has added the concept that plaintiffs' "shared individuated [16] right" in a government that does not establish religion is the "direct" or "concrete" injury required by a plaintiff who seeks to deploy the federal judicial machinery. This phraseology, alien to the language of standing, does not overcome this Court's refusal to recognize standing for a plaintiff whose injury is no more than "abstract injury in non-observance of the Constitution asserted by [plaintiffs] as citizens." *Schlesinger, supra* at 223, n. 13. As will be seen, these Respondents are ideological plaintiffs, "separationists", *Americans United, supra* at 261 (A. 18) who are unaffected and unharmed by the transfer, but who

16. The majority opinion defines "individuated" in this fashion: To be individuated, 'an interest need only be expressible in terms of the individual litigants' concrete satisfaction or experiences; but such saitfsactions or experiences need not be *unique* to the litigant' (quoting L. Tribe, American Constitutional Law § 319, at 85 (1978) *Americans United, supra* 259 (A. 14).

seek to engage in "forensic" litigation; they do not invoke the judicial process for the healing of injury. If Respondents have standing, then the Third Circuit's opinion has guaranteed to every citizen the right to a federal forum to debate his grievances with government.

For this Court to follow the majority's lengthy journey to repudiate *Flast* and ultimately recognize citizen standing demands a consideration and acceptance of several subsidiary premises:

First, that the *Flast* Court was limited by the pleadings: had the *Flast* plaintiffs alleged something more than their taxpayer status, this Court would have held in *Flast* ". . . that the Establishment Clause does create in every citizen a personal constitutional right, such that any citizen, including taxpayers, may contest under that clause the constitutionality of federal expenditures." *Americans United, supra* at 262. (A. 21)

Secondly, the Court must appreciate that while these Respondents pleaded only their taxpayer status, actually their "essential contention", *Americans United, supra* 234 (A. 4) is that government conduct injured them offering this Court the opportunity that it did not have in *Flast* to change the law.

Finally, this Court must agree that the ideology of an absolute separatist position distinguishes these Respondents from the rest of the American citizenry and warrants standing, or alternatively, independent of their separatist goals, these plaintiffs as citizens have standing to sue under the Establishment Clause, even though they have not achieved taxpayer status.

Flast Revisited and Retreaded

The Court of Appeals agreed with the District Court that Respondents lacked taxpayer standing but said that the District Court erred in misperceiving" . . . the legal

identity assumed by the [Respondents] in this case." *Americans United, supra* at 254. (A. 4) "the heart of [Respondents'] complaint is that the challenged governmental action caused 'injury in fact' to their shared individuated right to a government that . . ." does not violate the First Amendment. If the heart of the complaint be located within its four corners, then it beats strongly over injury to the individual Respondents as *taxpayers;* the murmur of injury to a "shared individuated right" heard by the Court can be neither seen nor heard by any fair examination of the amended complaint.[17]

The fact that the pleadings in this case are different than the pleadings in *Flast,* says the Court below, offers it the opportunity to embrace a theory which, but for pleading inhibitions, this Court in 1968 was rendered unable to articulate.

The fallacy of this perception is that neither the amended complaint nor the record here support, nor did the record in *Flast* or the subsequent opinions of this Court indicate that apart from taxpayer status any citizen has standing.

As to the record below, the amended complaint identifies the individuals as taxpayers and the organizational plaintiff as a non-profit corporation. It is asserted that each taxpayer ". . . would be deprived of the fair and

17. As to each of the allegations respecting the plaintiffs' status, the complaint pleads: [the individual] is a citizen of the United States (Amended Complaint ¶¶ 3-6). Even the statement of the claim does not relate the injury personally to Respondents. They allege:

> the granting of property or other financial assistance to such colleges is a violation of the Establishment Clause of the First Amendment of the Constitution of the United States of America which states 'Congress shall make no law respecting the establishment of religion . . .'. (Amended Complaint, ¶ 12)

constitutional use of his (her) tax dollar for constitutional purposes in violation of his (her) rights under the First Amendment . . .". (Amended Complaint, ¶ 8) No other basis of standing is asserted. Discovery conducted both by interrogatories and depositions was unilluminating as to Respondents' supposed stake in the outcome of this litigation. Respondent Gunn, for example, said he sustained a pocketbook injury because if property was given away he would be obliged as another taxpayer to ". . . make up the difference."[18] Another, while agreeing that the future reduction of taxes would be "comparatively small", nevertheless *linked the injury* to his taxpayer status.[19]

The organizational Respondent's standing to sue is based upon the assumed status of its members as federal taxpayers and upon their personal right to redress alleged constitutional grievances. (Amended Complaint, ¶ 2) It did not claim taxpayer status; it cannot be a *Flast* plaintiff. The amended complaint may be read to suggest that the organization Respondent tenders its special interest in maintenance of the constitutional principle of church and state as a basis for its standing to sue.

This Court has held a party may have standing to assert only its own rights, and not the rights of third parties. *Arlington Hts. v. Metro Housing Corp.*, 429 U. S. 252 (1977). Only where the organization itself has been injured, may it thereafter assert the rights of its members provided that the organization's injury is the same as theirs. *Warth v. Seldin*, 422 U. S. 490 (1975); see also, *Boston Stock Exch. v. State Tax Comm.*, 429 U. S. 318 (1977). In according this organization standing, Judge Adams fails to apply the criteria which this Court announced in *Warth, supra*, which are: first, that the organization must seek judicial relief from injury to itself and second, that it must

18. Gunn Deposition at 12.

19. Doerr Deposition at 35.

at least assert the adverse effect of the challenged action on its members' associational ties. *Warth, supra* at 511. The organization satisfied neither of these criteria.

This Court's opinion in *Sierra Club v. Morton* [20] is an absolute prohibition to "special interest" organizational standing. In *Sierra Club*, this Court expressly disapproved the organizational plaintiff's historic interest in conservation and held that "mere interest in a problem" no matter how longstanding and no matter how qualified the organization, does not meet the standing test of "distinct and palpable injury" to challenge governmental action. *Sierra Club, supra* at 739. See also, *Simon v. East Kentucky Welfare Rts. Org., supra; Schlesinger, supra* at 226; *American Jewish Congress v. Vance*, 575 F. 2d 939 (D. C. Cir. 1978) (denying standing to the separationist [21] plaintiff and holding that "sheer motivation and commitment to the subject matter of a suit, no matter how strong, cannot substitute for judicially cognizable injury". *Id.* at 943.

The Court's contention that but for pleading limitations, *Flast* would have announced the principle espoused by the majority below smacks more of rationalization than it does of *ratio decidendi*. None of the opinions of the *Flast* Court complains of pleading limitations. Nothing in the majority opinion suggests a "feel" of more than a conditional willingness to open the door to taxpayer suits. The opinions of the three-judge court which decided the *Flast* case below do not support this focus. That complaint asserts taxpayer status and constitutional violation. The research of Judge Weis below, dissenting, who combed the

20. 405 U. S. 727.

21. The plaintiff in this case, the American Jewish Congress, was named by one scholar as one of the three leading separationists groups in America. The other two are the Respondent organization and the American Civil Liberties Union. Sorauf, *The Wall of Separation* (Princeton University Press 1976).

record and briefs before this Court in *Flast*, persuasively demonstrates that not only does the record *not* support the majority's version of what happened, but that the identical theory adopted by the Circuit Court here was rejected there. He concludes:

> It cannot be said, therefore, that the Supreme Court was not strongly urged to adopt the theory that the majority here now advances. *American United, supra* at 270. (A. 38)

Since *Flast*, this Court has been presented with frequent opportunities to embrace the hypothesis of the majority or to forecast in dictum that it is constitutionally viable. On each occasion this Court has convincingly reaffirmed *Flast*. See, *Schlesinger, supra*, and *Simon, supra*. Though the opinion of the Court below acknowledges the requirements that "[c]oncrete injury, whether actual or threatened, has been an indispensable element of a dispute and the prerequisite to taxpayer standing", *Schlesinger, supra* at 221, it does no more than pay lip service to this principle.

Judge Adams' conclusion that the violation of a "personal constitutional right is in and of itself a sufficiently definite injury to warrant standing" draws support from his reading of *Baker v. Carr*, 369 U. S. 186 (1962) and *Schempp v. Abington School District*, 374 U. S. 203 (1963). He wrote:

> The Supreme Court has often recognized that an allegation of "particular concrete injury" to a plaintiff's fundamental rights, as distinguished from the "abstract injury" in non observance of the Constitution asserted by litigants as citizens, can supply standing. *Americans United, supra* at 264. (A. 25)

But, in *Baker* the injury was direct and perceptible since the right to vote was threatened by dilution and in *Schempp* parents' and students' religious beliefs were impacted by a religious exercise. To say that these Respondents are entitled to a government which will not establish religion without any other noticeable impact is to say now to the *Schlesinger* plaintiff that he is entitled to a government that will not violate the incompatibility clause and to the *Richardson* plaintiff that a citizen is entitled to a government which will not violate Art. I, § 9, Cl. 7 (relating to the accountability of public monies).

Gloss, rather than substance is the result of laminating the "zone of interests" test of *Data Processing* into the analysis. *Americans United, supra* at 264. (A. 26) If government action violates a right protected by a statute or clause of the Constitution, the zone of non-economic values recognized in *Data Processing* is not needed. Yet, the Court implies that the Respondents' injury may have something to do with their "spiritual stake and First Amendment values." *Americans United, supra* at 264. (A. 26) There is no suggestion anywhere in this record that the Respondents' spiritual values have been damaged by the government action here challenged. No other non-economic value or indirect loss was pleaded and hence employment of the zone of interests test by the Court strains the point and remains puzzling.

Citizen-Separationists Are Ideological Plaintiffs; Citizens at Large Are Not Entitled to Standing

At several points in its opinion, the Court appears to distinguish these Respondents from the citizenry at large by creating standing for special interest groups, here, separationists.[22] The Court was no doubt concerned with

22. For an exposition of the separationist philosophy, *qua* ideology, see Sorauf, *supra*.

overcoming the *Schlesinger* holding that ". . . standing to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public . . ." *Schlesinger, supra* at 220.

Yet, it seems most unwise to accord standing to citizens who distinguish themselves from the polity by virtue of a historic or deep commitment to a principle. Special interest groups with deep commitments to all manner of ideological principles can be said to be differentiated from the citizenry at large. Standing for a citizen-separationist without taxpayer standing is the precedent for standing to sue for organizations and individuals who are citizen-conservationists, citizen-segregationists, citizen-liberals and citizen-conversatives and endless hyphenated standing formulations.

While the pleadings state that the organizational plaintiff has been committed to the principle of separation of church and state, the individual Respondents cannot distinguish their injury as anything different from that to citizenry at large. Respondent Settembrini testified that the injury "could be defined as general," and can "also be defined as specific" [23] Two other Respondents admitted that their injury was shared in common with other taxpayers.[24]

The Court affirmed that the Respondents ". . . are decidedly not ideological plaintiffs . . . intent on adjudicating their own generalized views concerning the legality of the challenged action." *Americans United, supra.* Separationism is an ideology, a point of view from which church-state issues are approached. This Court has never adopted the absolute as the approach to church-state relations; as Chief Justice Burger observed: "The course of constitutional neutrality . . . cannot be an absolute straight

23. Settembrini Deposition at 13-14.

24. Gunn Deposition at 25-26; Doerr Deposition at 36.

line; rigidity could well defeat the basic purpose [of the First Amendment]", *Walz v. Tax Commission*, 397 U. S. 664, 669 (1970). It is a view which competes with others such as "accommodationists" [25] which is equally an ideology. More to the mark, separationism is not the law of the land, the violation of which gives rise to a personal right of redress.

Respondents' depositions illustrate the wisdom of this Court's rationale for consistently closing federal courts to the litigation of rhetoric. Lacking harm or injury, Respondents by their lawsuit instead sought to debate what should have been done with the property. One Respondent thought it should have been utilized for the general welfare of all taxpayers.[26] Others thought it should be sold.[27] That a federal court not be used to permit citizens to second guess governmental choices, but only to redress wrongs is the foundation of this Court's standing rules. That foundation crumbles with the adoption of the opinion of the Third Circuit.

As the majority opinion winds to conclusion, Judge Adams appears to relinquish reliance upon these citizens as separationists and modifies the hypothesis to conclude that all citizens can challenge Establishment Clause violations *without taxpayer status.*

> An allegation of injury in fact to an interest protected by the Establishment Clause is all that is required for standing. *Americans United, supra* at 265. (A. 28)

No case decided by this Court has permitted citizen standing to challenge governmental action absent con-

25. The term "accomodationist" appears in Sorauf, *The Wall of Separation* (Princeton University Press 1976) in a chapter called "The Accommodationist Defendants".

26. Settembrini Deposition at 13.

27. Gunn Deposition at 12.

crete injury commonly supplied by taxpayer status. The concept of citizen standing was rejected by this Court in *Schlesinger*. It is apparent, as this Court observed in *Schlesinger*:

> The only interest all citizens share in the claim advanced by Respondents is one which presents injury in the abstract. Respondents seek to have the Judicial Branch compel the Executive Branch to act in conformity with the [*Schlesinger* reads the Incompatability Clause, but the Establishment Clause certainly fits], an interest shared by all citizens. *Id.* at 217.

The majority, conscious of the *Schlesinger* and *Richardson* limitations attempts a distinction which is verbal at most:

> The decision in *Reservists* and *Richardson* appear to be based on the inadequate nature of the plaintiffs' alleged injury in fact. *Americans United, supra* at 263. (A. 24)

Yet, the only difference between the injury alleged in those cases and that alleged here are the differing clauses of the Constitution. The Court of Appeals has said that for non-observance of the Establishment Clause a citizen suffers "concrete" injury; however, the same citizen is rendered uninjured and powerless to rectify the non-observance of all other clauses of the Constitution.

In its laborious journey to endorse citizen standing, it would seem that the Third Circuit failed to observe this Court's admonition in *Schlesinger*:

> Our system of government leaves many crucial decisions to the political processes. The assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing. *Schlesinger, supra* at 227.

CONCLUSION

Valley Forge Christian College respectfully prays the Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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Appendix.

Opinion of the United States Court of Appeals for the Third Circuit, Americans United for Separation of Church and State, Inc., Gunn, Andrew Leigh, Doerr, Edward D., Settembrini, Gioele, Binns, E. Mallary, Appellants v. United States Department of Health, Education and Welfare, United States of America, Northeast Bible College, a/k/a Valley Forge Christian College, No. 79-1221, filed April 8, 1980, 619 F2d 252 (1980).

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 79-1221

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., GUNN, ANDREW, LEIGH, DOERR, EDWARD D., SETTEMBRINI, GIOELE, BINNS, E. MALLARY,

Appellants

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA, NORTHEAST BIBLE COLLEGE, a/k/a VALLEY FORGE CHRISTIAN COLLEGE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

C. A. No. 77-1321
Argued October 12, 1979
Reassigned February 7, 1980

Before: ADAMS, ROSENN and WEIS, *Circuit Judges*
(Filed April 8, 1980)

OPINION OF THE COURT.

ADAMS, *Circuit Judge.*

The question presented in this appeal is whether an organization devoted to the separation of church and state, and several of its members suing as individual citizens, have standing to challenge the transfer of government property to a concededly religious organization.

I. FACTUAL BACKGROUND

In August 1976, the Department of Health, Education and Welfare (HEW) conveyed 77 acres of surplus government property located in Valley Forge, Pennsylvania, as well as buildings, fixtures, and equipment situated thereon, to the Valley Forge Christian College. The property was transferred pursuant to the Federal Property and Administrative Services Act of 1949, which authorizes HEW to sell or to lease surplus government property to tax-exempt institutions for health and educational purposes.[1] In setting the sale or lease value of the property to be transferred, the Act requires the Secretary of HEW to consider any benefit that may accrue to the United States from the designated use of such property,

1. 40 U. S. C. § 484(k) (1976).

and to grant discounts, known as "public benefit allowances," to transferees.[2] In exchange for its agreement to use the property in conformance with specified educational purposes for a period of thirty years, HEW granted to the college a 100% public benefit allowance. As a result, the property was transferred without any financial payment by the college. The total fair value of the property, acquired by the government at an estimated cost of $10,374,386.00, was stated to be $1,303,730.00 at the time of transfer.

The Valley Forge Christian College is admittedly sectarian. Operated under the supervision of the Assemblies of God, the college's primary purpose is to train leaders for church-related activities. Its curriculum is devoted to bible study, Christian service, and theology. Attendance at daily chapel service and regular participation in Christian activities is mandatory for all students.

Numerous transfers of government property to hundreds of church-denominated institutions have been authorized under the Act. As a matter of practice, HEW nearly always grants these organizations a public benefit allowance ranging from 95% to 100% of the property's estimated fair value. In this manner, HEW has in most cases relieved the benefitted religious organizations of the obligation to make financial payment for property received. Since the enactment of this Act, HEW has authorized more than 650 separate transfers of surplus government property to various religious institutions. The total fair market value of government property transferred to denominationally sponsored organizations during this period amounted to more than $25,700,000.00. The initial cost of acquiring this property was over $64,494,000.00.

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2. Id. 45 C. F. R. § 12 (1978).

Americans United for Separation of Church and State, Inc., a nonprofit, tax-exempt organization claiming a membership of 90,000, and four of its individual directors, citizens and taxpayers of the United States, challenged HEW's transfer of government property to the Valley Forge Christian College. As defined by its Articles of Corporation, American United's purpose is "to defend, maintain and promote religious liberty and the constitutional principle of the separation of church and state." The plaintiffs alleged that this property transfer constituted a violation of their individual rights protected by the Establishment Clause of the First Amendment, and sought declaratory and injunctive relief to void the transfer. On the defendants' motion, the district court dismissed the suit on the ground that plaintiffs lacked standing as taxpayers to challenge a transfer of property pursuant to the Federal Property and Administrative Services Act. This appeal is from that judgment.

Although we accept the district court's conclusion that the plaintiffs lack *taxpayer* standing to contest the challenged conduct, we disagree with its conception of the legal identity assumed by the plaintiffs in this case. Americans United for Separation of Church and State, a nonprofit organization, is precluded by its very nature from assuming the status of taxpayer. And while the four members of this organization suing as individual plaintiffs do assert standing as taxpayers, none of them does so exclusively or as a matter of primary concern. The plaintiffs' essential contention, rather, is that the governmental conduct in question caused them individuated injury because it abridged their right—protected by the Establishment Clause of the First Amendment—to a Government that does not establish religion. Because the constitutional injury complained of by the plaintiffs gives them a sufficient "personal stake" in the present

controversy to assure the court a "complete perspective" of the issues, and because the interest they seek to protect is arguably within the zone of interests protected by the Establishment Clause of the First Amendment, we hold that the plaintiffs possess legal standing to maintain this action. Accordingly, we will reverse the judgment of the district court.

II. The Standing Requirement in General

The concept of standing to sue derives essentially from Article III of the Constitution, which extends the federal judicial power only to certain classes of "cases" and "controversies."[3] Standing differs from the other elements of justiciability in that it focuses primarily on the status of the litigant, and only secondarily on the issues he wishes to have adjudicated.[4] Although the case or controversy requirement provides the framework within which the question of standing in federal courts must be considered,[5] Article III merely delimits the jurisdiction of

3. U. S. Const. art. III, § 2, states:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

4. Flast v. Cohen, 392 U. S. 83, 99 (1968).

5. Association of Data Processing Serv. Organizations v. Camp, 397 U. S. 150, 151 (1970).

federal courts; it neither defines nor is it synonymous with the doctrinal limitations of standing. As the Supreme Court has asserted, "the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." [6] Yet, the doctrine of standing reflects as well a blend of policy considerations that are "not always clearly distinguished from the constitutional limitation." [7]

Courts and commentators have been confounded for many years by the question of standing.[8] To a considerable degree, the complexities and uncertainties stem from its case-by-case course of development, which has been "more or less determined by the specific circumstances of individual situations." [9] The rules of standing have been fashioned not in the abstract, but "with specific reference to the status asserted by the party whose standing is challenged and to the type of question he wishes to have adjudicated." [10] For this reason, the Supreme Court has

6. Flast v. Cohen, 392 U. S. 83, 101 (1968), *quoted in* Association of Data Processing Serv. Organization v. Camp, 397 U. S. 150, 151-52 (1970).

7. *Id.* at 97 (quoting Barrows v. Jackson, 346 U. S. 249, 255 (1953)).

8. One recent commentator has insisted that the law of standing "lacks a conceptual framework" and amounts to "little more than a set of disjointed rules dealing with a common subject." Tushnet, *The New Law of Standing: A Plea for Abandonment*, 62 Cornell L. Rev. 663 (1977). Another has concluded that the "whole law of standing is so confused and cluttered . . . that the lower courts and practitioners especially need Supreme Court guidance." K. Davis, Administrative Law of the Seventies § 22.00.-01, at 167 (Supp. 1977).

9. United States *ex rel.* Chapman v. Federal Power Comm., 345 U. S. 153, 156 (1953).

10. Flast v. Cohen, 392 U. S. 83, 101 (1968).

declared that "[g]eneralizations about standing to sue are largely worthless as such." [11] Only by distinguishing the different contexts in which the Supreme Court has attempted to give "some meaningful form . . . to the jurisdictional limitations placed on federal court power by the concept of standing," [12] is it possible to reach some comprehension of what the requirement entails.

Early discussions by the Court regarding the question of standing were anchored in the notion of a "legally protected interest" on the part of the litigant.[13] Under this approach, standing to litigate was conditioned on a showing by the plaintiff that the challenged governmental action threatened one of his legally protected interests.[14]

11. Association of Data Processing Serv. Organizations v. Camp, 397 U. S. 150, 151 (1970).

12. Flast v. Cohen, 392 U. S. 83, 99 (1968).

13. *See, e.g.*, Perkins v. Lukens Steel Co., 310 U. S. 113, 125 (1940); Tennessee Elec. Power Co. v. TVA, 306 U. S. 118, 137 (1939); Alabama Power Co. v. Ickes, 302 U. S. 464, 479 (1938).

14. Tenessee Power Co. v. TVA, 306 U. S. 118, 136-37, 147 (1939). The "legal interest" inquiry was a product of the traditional legal order in which a court's basic function was to settle disputes between private individuals regarding property or liberty of person. As civil litigation against government officials evolved, there remained a need to perceive an ownership claim before courts could recognize an individual whose ownership interest could be adjudicated. It was only natural for courts to seek to accommodate such litigation within the existing structure of legal thinking and language appropriate to private dispute settlement. Challenges to governmental action thus triggered judicial inquiry into whether such action had invaded the complainant's legally protected interest. Courts in effect sought guidance from other areas of the law in order to determine whether a plaintiff's alleged interest was deserving of judicial protection. Scott, *Standing in the Supreme Court—A Functional Analysis*, 86 Harv. L. Rev. 645, 650 (1973). For an illuminating discussion, see J. Vining, Legal Identity 13-33 (1978).

Only if the plaintiff demonstrated an invasion of such an interest would the courts respond to claims of serious harm or injury resulting from illegality.[15] As challenges to governmental conduct increased during the course of this century, however, observation of the "legal interest" test "became steadily more perfunctory, and the link with private-dispute settlement more tenuous."[16] Litigants increasingly recognized, and desired to attack, the impact of governmental conduct on these so-called "noneconomic" values. Judicial reluctance to deny standing to such individuals consequently led to the conceptualization of individual and organizational interests in noneconomic values as legally protected interests. As the "legal interest" test was increasingly expanded to include such values, however—especially in the case of challenges brought under the Constitution and certain statutes that imposed rules of conduct on the government without specifying any private remedies for their enforcement—the exercise began to lose its point, and eventually was abandoned. In two cases decided in 1970, *Association of Data Processing Service Organization v. Camp*[17] and *Barlow v. Collins*,[18] the "legal interest" test for standing, which "had become symbolically definitive even as it was increasingly

15. As Justice Frankfurter elaborated: "A litigant ordinarily has standing to challenge governmental action of a sort that, if taken by a private person, would create a right of action cognizable by the courts. . . . Or standing may be based on an interest created by the Constitution or a statute. . . . But if no comparable commonlaw right exists and no such constitutional or statutory interest has been created, relief is not available judicially." Joint Anti-Fascist Refugee Comm. v. McGrath, 351 U. S. 123, 152 (1951) (concurring opinion).

16. J. Vining, *supra* note 14, at 23.

17. 397 U. S. 150 (1970).

18. 397 U. S. 159 (1970).

ignored,"[19] was finally overruled explicitly and replaced by a new formulation of the standing doctrine.

A. The Modern Law of Standing: Personal Injury in Fact

The modern law of standing, set forth in *Data Processing* and *Barlow* and reaffirmed in the same words since, requires no more than an allegation that the challenged official action has caused the plaintiff "injury in fact, economic or otherwise,"[20] to an interest "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."[21] Requiring "injury in fact" ensures that standing to sue is conferred only on individuals having a "personal stake in the outcome" of a controversy, and not on those with merely generalized or external preferences about its outcome.[22] Personal injury to a cognizable interest of the litigant, it is felt, will assure "that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult

19. J. Vining, *supra* note 14, at 26-27.

20. Data Processing Serv. Organizations v. Camp, 397 U. S. at 152.

21. *Id.* at 153.

22. Baker v. Carr, 369 U. S. 186, 204 (1962), *quoted in* Flast v. Cohen, 392 U. S. 83, 101 (1968).

For a discussion of the distinction between "personal" and "external" preferences *see* R. Dworkin, Taking Rights Seriously 234-39 (1977). External preferences need not be independent of, indeed they may reinforce, personal preferences. *See* Sierra Club v. Morton, 405 U. S. 727, 738 (1972) ("The test of injury in fact goes only to the question of standing to obtain judicial review. Once this standing is established, the party may assert the interests of the general public in support of his claims for equitable relief.").

. . . questions." [23] As a result, when standing is placed in issue today, the question is "'whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue' and not whether the controversy is otherwise justiciable, or whether, on the merits, the plaintiff has a legally protected interest that the defendant's action invaded." [24]

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23. Baker v. Carr, 369 U. S. 186, 204 (1962), *quoted in* Barlow v. Collins, 397 U. S. at 170-71 (Brennan, J., concurring and dissenting). "We may reasonably expect," as Justice Brennan noted in *Barlow*, "that a person so harmed will, as best he can, contest the issues with the necessary adverseness, and pursue the litigation vigorously." 397 U. S. at 172-73 (footnote omitted).

24. Barlow v. Collins, 397 U. S. at 171 (Brennan, J., concurring and dissenting) (footnote omitted) (quoting in part Flast v. Cohen, 392 U. S. at 99-100). The discrediting of the "legal interest" test, as Professor Vining has suggested, represented "not simply an incremental development, but a shift in the axioms of legal thinking" *supra* note 14, at 39. "The 'legal interest' test," the Supreme Court said in *Data Processing*, "goes to the merits. The question of standing is different." 397 U. S. at 153. This important distinction between whether a plaintiff is a proper party to request an adjudication of a particular issue and whether that issue itself is justiciable had been drawn by the Court two years previous in *Flast v. Cohen*, 392 U. S. 83, 95 (1968). Prior to that decision, however, the existence or nonexistence of a "legal interest" was not, as the Supreme Court subsequently held, "a matter quite distinct from the problem of standing." Association of Data Processing Serv. Organizations v. Camp, 397 U. S. at 153 n. 1. On the contrary, prior statements had bound together standing, the merits, and the remedy. If the plaintiff was given standing to assert his claims, his interests were legally protected; if he was denied standing, his interests were not legally protected. The separation in *Data Processing* and *Barlow* of the question of standing to sue, on the one hand, from those of the merits and the remedy, on the other, thus reflected a fundamental departure. It represented a new awareness of judicial power and a willingness to address issues and provide remedies even when "the merits do not seem to focus on the situation of a particular individ-

The categories of injury that may be alleged to support a litigant's standing to sue have increased considerably since the modern formulation of the standing doctrine in *Data Processing* and *Barlow*. Various allegations of harm have been recognized by the Supreme Court as sufficient to meet the requirement of "injury in fact." The most commonly recognized "injury in fact" has been economic in nature. In *Data Processing*, for example, the economic interests of data processors in agency rulings allowing nationally regulated banks to compete in the data processing industry supplied the requisite personal stake for the processors to challenge the agency action. Yet the Supreme Court went out of its way "to emphasize that standing may stem from [noneconomic values] as well as from . . . economic injury." [25] In particular, the Court indicated that injury to aesthetic, conservational, recreational, and spiritual values may satisfy the "injury in fact" requirement.[26]

Dictum in *Data Processing* to the effect that the alleged injury necessary to confer standing need not be of an economic nature was soon fortified. In *Sierra Club v. Morton*,[27] the complainant alleged that a road development through a National Park would adversely affect the scenery and wildlife of the area, and would impair the enjoyment of the park in the future. Although the Supreme Court denied standing because the Sierra Club had not alleged that its members would be personally injured by the development, it did not question that "this type of

24. (Cont'd)
ual" or "no remedy restoring or protecting a person as such and by 'name' is appropriate." J. Vining, *supra* note 14, at 44.

25. 397 U. S. at 154.

26. *Id.*

27. 405 U. S. 727 (1972).

harm may amount to 'injury in fact' sufficient to lay the basis for standing." [28] The Court later validated environmental injury as a basis for standing. In *United States v. SCRAP*,[29] a group of law students who used the public parks challenged an agency ruling allowing a railroad rate increase which they claimed would result in greater litter in the parks. Noting that the claimed injury to the environment was "far less direct and perceptible" than that at issue in *Sierra Club*, and that the line of causation offered was "far more attenuated," the Court nonetheless concluded that the plaintiffs had alleged "a specific and perceptible harm" sufficient to satisfy the test of injury in fact.[30]

An allegation that official action violates the plaintiff's constitutional rights may also set forth a sufficient injury to meet the "injury in fact" test. In *Baker v. Carr*,[31] for instance, an asserted injury to voting rights supplied the basis for standing to attack the constitutionality of an apportionment scheme that allegedly diluted the relative effectiveness of the plaintiffs' right to vote. And in *Abington School District v. Schempp*,[32] standing to contest the constitutionality of Bible-reading in public schools was conferred on students and their parents who claimed that the practice violated their individual rights under the Establishment Clause.

Although it is now unquestioned that standing to sue may be premised on injury to noneconomic as well as economic values, "the injury in fact test requires more

28. *Id.* at 734.

29. 412 U. S. 669 (1973).

30. *Id.* at 688-89.

31. 369 U. S. 186 (1962).

32. 374 U. S. 203 (1963).

than an injury to a cognizable interest." [33] The acceptance of new categories of judicially cognizable injury has not eliminated the basic principle that to invoke judicial power the claimant must allege personal injury that has been variously described by the Supreme Court as "particular" or "concrete," "specific" or "direct," rather than "general and abstract." Desirous to ensure that individuals most affected by the questioned activity have a role in the challenge, the Court has consistently refused to confer standing on plaintiffs seeking to vindicate merely their own generalized views regarding constitutionality, legality, or the public interest.[34] Failure to set forth individuated injury, therefore, even in the presence of a "case or controversy," deprives a litigant of standing. Yet, as the *Sierra* Court indicated, the fact that the alleged injury is "shared by the many rather than by the few does not make them less deserving of legal protection through the judicial process." [35] So long as an allegation of personal injury to a cognizable interest represents

33. Sierra Club v. Morton, 405 U. S. at 734-35.

34. *E.g.* Schlesinger v. Reservists Comm. to Stop the War, 418 U. S. 208 (1974); United States v. Richardson, 418 U. S. 166 (1974); Sierra Club v. Morton, 405 U. S. at 734-35. The *Sierra* Court readily conceded that "an organization whose members are injured may represent those members in a proceeding for judicial review." But it nonetheless refused to confer standing on the plaintiff organization because the Club failed to allege that it or its members would be affected in any of their activities by the challenged action. As the Court explained: "The requirement that a party seeking review must allege facts showing that he himself is adversely affected does not insulate executive action from judicial review, nor does it prevent any public interest from being protected through the judicial process. It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome." *Id.* at 739-40.

35. *Id.* at 734.

"an individuated interest of the litigant as distinguished from the polity as a whole," [36] it supplies the "personal stake in the outcome" needed for standing regardless of how many individuals share that injury. To be individuated, "an interest need only be expressible in terms of the individual litigant's concrete satisfaction or experiences; but such satisfactions or experiences need not be *unique* to the litigant." [37]

C. *Taxpayer Standing*

The more "distinctive and discriminating" the harm alleged by a plaintiff, and the more clearly linked it is to the action challenged, the more easily a plaintiff may meet the "injury in fact" test. When a plaintiff claims such harm, there is no need to consider what must be set forth to satisfy the standing requirement by a party who avers no special harm, but sues rather as a taxpayer to vindicate the interests of taxpayers generally.[38] In the absence of any allegation of individuated injury, however, an individual suing in his capacity as a taxpayer may nonetheless be able to demonstrate, under certain limited circumstances, a sufficient "personal stake in the outcome" to allow him to argue the merits of the cause.

Flast v. Cohen [39] enunciated the modern law of federal taxpayer standing. As defined by the Court, the question presented there was "whether a litigant asserting *only* his status as a taxpayer has standing to maintain a

36. L. Tribe, American Constitutional Law § 3-19, at 85 (1978).

37. *Id.* As the Court later held in *United States v. SCRAP*, 412 U. S. at 687: "standing is not to be denied simply because many people suffer the same injury."

38. Barlow v. Collins, 397 U. S. 159, 172 n. 5 (1970) (Brennan, J., concurring in the result and dissenting).

39. 392 U. S. 83 (1968).

suit in federal court."[40] Plaintiff-taxpayers in that case disputed the expenditure of federal funds to finance instruction and materials for use in religious schools on the ground that this abridged the Establishment Clause. In granting standing, the Supreme Court set forth two rules governing its decision. First, in order to maintain a suit, a "taxpayer must establish a logical link between that status and the type of legislative enactment attacked."[41] The Court apparently believed that such link could be demonstrated only if a successful suit might possibly result in some decrease in taxes. "Thus," the Court explained, "a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, § 8 of the Constitution. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute."[42] Second, the taxpayer must establish a nexus between his taxpayer status and the nature of the constitutional transgression claimed. "Under this requirement," the Court declared, "the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8."[43]

Because the program attacked in *Flast* dealt with a substantial expenditure of tax funds, rather than an incidental payment in the administration of an essentially regulatory statute, the Court found that the plaintiff-

40. *Id.* at 91 (emphasis added).

41. *Id.* at 102.

42. *Id.*

43. *Id.* at 102-03.

taxpayer satisfied the first requirement. The Court then discerned, on the basis of a remark by James Madison,[44] an intent on the part of the Framers of the Constitution to protect taxpayers, as special beneficiaries, from the use of the taxing and spending power to support religion. "The Establishment Clause was designed as a specific bulwark against potential abuses of governmental power," the Court elaborated, and it "operates as a specific constitutional limitation upon the exercise by Congress of the taxing and spending power."[45] The Court accordingly granted the plaintiffs standing, "That the Framers could at most have intended to protect taxpayers as a means to the protection of religious liberty was inconsequential: it was enough that they were protected as secondary beneficiaries."[46]

The two-part nexus test of *Flast* has been criticized. It is uncertain why a taxpayer should *be* precluded from questioning congressional spending authorized by a constitutional provision other than the taxing and spending clause. All government disbursements and expenditures, it has been asserted, are exercises of the spending power, even if also supported by some other constitutional provision. In addition, it is often difficult to distinguish governmental action that is primarily spending from activities primarily regulatory. The Court has nevertheless "drawn a sharp if artificial distinction"[47] between attacks by tax-

44. "'[T]he same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever. [Memorial and Remonstrance Against Religious Assessments.] 2 Writings of James Madison 183, 186 (Hunt ed. 1901).'" 392 U. S. at 103.

45. *Id* at 104.

46. J. Vining, *supra* note 14, at 109.

47. L. Tribe, *supra* note 36, § 3-19, at 84 n. 18 (1978).

payers on spending programs as such and attacks on other kinds of programs. As for the distinction between specific and nonspecific limitations on the taxing and spending power, it has been forcefully argued that a taxpayer's stake in the outcome of the dispute is the same regardless of the nature of the limitation. "A person who has standing to challenge for one kind of illegality that adversely affects him," Professor Davis contends, "necessarily has standing to challenge for another kind of illegality that adversely affects him to the same extent."[48] The Supreme Court has offered no guidelines for distinguishing between specific and nonspecific limitations. And while the Court expressly left open the question whether the Constitution contains other specific limitations,[49] taxpayer standing to challenge official action has since been strictly confined to actions premised on the Establishment Clause.

III. Standing Under the Establishment Clause

The district court first refused to recognize the plaintiffs' standing under the Establishment Clause. Then it denied jurisdiction on the assumption that the allegation of injury to plaintiffs' economic interests in reduced taxes offered the only possible basis for standing. From this assumption, the district court decided that the plaintiffs lack standing as taxpayers under *Flast*, because they cannot show a logical link between their taxpayer interest and the claim sought to be adjudicated. The legislation authorizing the transfer in question was enacted pursuant to the property clause of the Constitution, which provides Congress the "Power to dispose of . . . Property belonging to the United States."[50] Relying on the suggestion in

48. Davis, *Standing—Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 604 (1968).

49. Flast v. Cohen, 392 U. S. at 105.

50. U. S. Const. art. IV, § 3, cl. 2.

Flast that litigants asserting their interest as taxpayers have standing "to allege the unconstitutionality only of exercises of Congressional power under the taxing and spending clause," the district court concluded that the logical nexus between the asserted taxpayer interest and the disposition of the property challenged here is too strained to bring the plaintiffs within the narrow contours of taxpayer standing.

We do not dispute the district court's determination that under the law as it presently exists, individuals asserting *solely* their interest as taxpayers have standing to challenge only exercises of the taxing and spending power, and not actions authorized by other constitutional provisions. Inasmuch as litigants suing in the capacity of taxpayers must show that the activity in question involves substantial taxing and spending, it may well be that the plaintiffs here lack *taxpayer* standing. We do question, however, the assumption by the district court that the *only* basis advanced by the plaintiffs in support of their standing claim is, or must be, alleged injury to their interest as taxpayers.

The heart of plaintiffs' complaint is that the challenged governmental action caused "injury in fact" to their shared individuated right to a government that "shall make no law respecting the establishment of religion." Even the plaintiffs themselves would acknowledge that their allegation of taxpayers status is essentially an assumed role, set forth in response to uncertain pleading requirements. Plaintiffs have no reason to expect, nor perhaps do they care about, any personal tax saving that might result should they prevail. The crux of the interest at stake, the plaintiffs argue, is found in the Establishment Clause, not in the supposed loss of money, as such. As a matter of primary identity, the plaintiffs are not so much taxpayers as separationists, and their main concern

is not a reduction in taxes, but their declared goal of separation of church and state.

As enunciated in *Flast*, the doctrine of taxpayer standing was not meant to qualify the general standing requirement of a "personal stake in the outcome." To the contrary, *Flast's* purpose was to outline a limited set of circumstances in which an allegation of financial injury in the form of increased tax liability by itself might be considered an acceptable stake on which to predicate standing, quite apart from any allegation of individuated injury to other judicially cognizable interests. Indeed, the *Flast* court apparently found itself forced to premise standing on the plaintiff's taxpayer interest, solely because it discerned no other allegation of injury that could supply the requisite personal stake in the outcome. The Court described its "point of reference" as well as its "starting point for analysis," to be "the standing of individuals who assert *only* the status of federal taxpayers." [51] As viewed by the Court, the question presented was "under what circumstances a federal taxpayer whose interest stemmed *solely* from the taxes he paid to the Treasury '[would] be deemed to have the personal stake and interest that impart the necessary concrete adverseness to such litigation so that standing can be conferred on the taxpayer *qua* taxpayer consistent with the constitutional limitations of Article III.'" [52] In no case outside the

51. 392 U. S. at 91, 102. Although the court apparently understood the plaintiffs to be premising their standing solely on their status as taxpayers—and decided the case on that basis—the plaintiffs in their brief to the Court did assert not only this "pocketbook injury," but also "an injury to the right to live under a government which separates itself strictly from the church and church affairs." Brief for Appellant at 37.

52. United States v. Richardson, 418 U. S. 166, 205 (1974) (Stewart, J., dissenting) (quoting in part *Flast v. Cohen*, 392 U. S. 83, 101 (1968)).

context of taxpayer suits, however, has the Supreme Court demanded a subject matter nexus between the injury asserted and the constitutional claim sought to be adjudicated. Indeed, in *Schlesinger v. Reservists to Stop the War* [53] the Court explicitly rejected such a broad compass for the *Flast* nexus requirement. For the nexus criteria developed in *Flast* for *taxpayer* standing, "were not intended as a litmus test to resolve all conceivable standing questions in the federal courts." [54] They were fashioned, rather, "solely as a determinant of standing of plaintiffs alleging only injury as taxpayers to challenge federal legislation." [55] The Court recently affirmed this position in *Duke Power Co. v. Carolina Environmental Study Group*, by expressly stating that outside the context of taxpayers' suits, a litigant must demonstrate nothing more than "injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury to satisfy the 'case or controversy' requirement." [56]

The enormous labor spent by the Court to extend standing to the plaintiff in *Flast* through the precarious opening of taxpayer standing is best understood as a function of the Court's acknowledged "point of reference"—it found no allegation of injury except that claimed by the litigants in their capacity as a federal taxpayer. It was this perceived limitation in the pleadings and nothing else, we believe, which constrained the Court

53. 418 U. S. 208, *id.* at 225 n. 15 (1974). This requirement, the Court noted, "is not appropriate on a claim of citizen standing since the *Flast* nexus test is not applicable where the taxing and spending power is not challenged. . . ."

54. United States v. Richardson, 418 U. S. at 205.

55. Schlesinger v. Reservists to Stop the War, 418 U. S. 208, 238 (1974) (Brennan, J., dissenting).

56. 438 U. S. 59, 79 (1978) (footnote omitted).

in *Flast* from deciding that the plaintiffs' interest in the establishment issue, without reference to their taxpayer status, would supply a stake sufficient to support standing. The underlying justification for according standing in *Flast* it seems, was the implicit recognition that the Establishment Clause does create in every citizen a personal constitutional right, such that any citizen, including taxpayers, may contest under that clause the constitutionality of federal expenditures. As previously suggested, it is because "each citizen has a personal stake in ensuring that the Government not establish a religion," that "a citizen apparently does suffer a sufficiently personal injury to confer standing when he is taxed to support a religious institution." [57]

In contrast to the construction of the plaintiffs' contentions in *Flast*, the litigants here *do* allege injury in fact to an interest other than the economic interest they share as taxpayers. They claim that the challenged action injures their important concern in the separation of church and state and that this is within the zone of interests protected by the Establishment Clause of the First Amendment. Thus, their appeal squarely presents the novel and important question posed by Justice Fortas in *Flast*, which the Court did not reach and thus did not decide: whether "the vital interest of a citizen in the establishment issue, without reference to his taxpayer's

57. Richardson v. United States, 465 F. 2d 844, 865 (3d Cir. 1972) (in banc) (Adams, J., dissenting), *rev'd*, 418 U. S. 166 (1974). "[T]he establishment clause was surely intended to protect not merely or even primarily taxpayers as such, but all citizens of the new nation who believed in religious liberty and feared enforced conformity to a state religion; it would therefore seem to follow that any citizen should have standing in a case like *Flast*, since each has a logical nexus between his status as citizen and the claim that federal programs violate the first amendment." Scott, *supra* note 14, at 662.

status, would be acceptable as a basis for [standing to bring] this [kind of] challenge." [58]

The question of "the vital interest of a citizen in the establishment issue" must be distinguished from the question of "citizen standing" as such. The Supreme Court has consistently admonished that a citizen who suffers equally with all other citizens will not be heard to raise generalized grievances about the conduct of the Government.[59] In *Reservists*, for example, individuals suing as citizens attempted to prevent certain members of Congress from serving at the same time as officers of the Armed Forces reserve.[60] They alleged that the incompatibility clause of Article I, § 6 renders members of Congress "ineligible to hold a commission in the Armed Forces Reserve during his [or her] continuance in office." [61] Holding that the plaintiff lacked standing, the Court stated: "standing to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share. Concrete injury whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution." [62] All citizens,

58. 392 U. S. at 115-16 (concurring opinion).

59. *E.g.*, Schlesinger v. Reservists Comm. to Stop the War, 418 U. S. 208 (1974); United States v. Richardson, 418 U. S. 166 (1974).

60. 418 U. S. at 227-28. Standing in their capacity as taxpayers was denied on the basis of Flast v. Cohen, 329 U. S. 83, 102-3 (1968).

61. 418 U. S. 208 (1974). The incompatibility clause states: "no person holding any office under the United States shall be a member of either House during his Continuance in Office." U. S. Const. art. I, § 6.

62. *Id.* at 209.

the Court noted, share equally an interest in constitutional government. "In some fashion, every provision of the Constitution was meant to serve the interests of all."[63] Yet, to recognize "[s]uch a generalized interest" as a sufficient basis for citizen standing to enforce judicially all constitutional provisions, "simply because citizens are the ultimate beneficiaries," the Court concluded, "has no boundaries."[64]

A similar question was raised in *United States v. Richardson*.[65] There, a taxpayer and citizen sought to challenge a statute that allowed the Central Intelligence Agency to avoid publicly accounting for its receipts and expenditures, in alleged violation of Article I, § 9's requirement that "a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." Although the Court conceded that the plaintiff had a genuine interest in the use of public funds, it found his claims "plainly undifferentiated" and "common to all members of the public."[66]

Accordingly, because he had failed to demonstrate a "'personal stake in the outcome,' . . . or a particular, concrete injury . . . in short, something more than 'generalized grievances,'"[67] the plaintiff was denied standing. Ideological plaintiffs, with simply "a mere 'interest in a problem'",[68] will not be permitted to assert the public interest in a constitutional claim.

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63. *Id.* at 226-27.

64. *Id.* at 227.

65. 418 U. S. 166 (1974).

66. *Id.* at 177 (quoting *Ex parte* Levitt, 302 U. S. 633, 634 (1937) (per curiam)).

67. *Id.* at 106.

68. Sierra Club v. Morton, 405 U. S. 727, 739 (1972).

The decisions in *Reservists* and *Richardson* appear to be based on the inadequate nature of the plaintiff's alleged injury in fact. In both cases, the Court sought to distinguish the "abstract injury in nonobservance of the Constitution asserted by respondents as citizens" from what it described as "direct" or "concrete" injury.[69] As applied by the Court, however, the "injury in fact" requirement was not independent from the related inquiry regarding the interest sought to be protected. Thus, in *Schlesinger*, the Court noted that, unlike allegations asserting violation of "some limitation of the Constitution," in which case "it can only be a matter of speculation whether the claimed violation has caused concrete injury to the particular complainant," an allegation of "concrete injury" to "fundamental . . . rights" may supply "a personal stake . . . sufficient to support standing."[70] In similar fashion, the Court in *Richardson* found it "open to serious question whether the Framers of the Constitution ever imagined that general directives to the Congress or the Executive would be subject to enforcement by an individual citizen."[71] It would appear, therefore, that the Court's consistent refusal to grant "citizen standing" to ideological plaintiffs seeking to litigate the public interest has turned as much on the inadequacy of the alleged interest sought to be protected as it has on the deficiency of the injury alleged.[72]

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69. Schlesinger v. Reservists Comm. to Stop the War, 418 U. S. at 223 n. 15.

70. *Id.*

71. 418 U. S. at 178 n. 11.

72. In a recent article, Professor Tushnet has argued that a preference by the Supreme Court for "better" plaintiffs stands as an implied limitation upon the conferral of standing. *See supra* note 8, at 690-93. In both *Reservists* and *Richardson*, the Supreme Court recognized a similar argument "that if respondents could not

The Supreme Court has often recognized that an allegation of "particular concrete injury" to a plaintiff's fundamental rights, as distinguished from the "abstract injury" in nonobservance of the Constitution asserted by litigants as citizens, can supply a personal stake in the outcome sufficient to support standing.[73] Thus, in *Baker v. Carr*,[74] an asserted injury to the plaintiff's fundamental right to vote was deemed a sufficient personal stake to

72. (Cont'd.)
obtain judicial review of petitioner's action, 'then as a practical matter no one [could]' "; but in each case the Court emphasized that the lack of a better plaintiff was "irrelevant" to the question of standing. "The assumption that if respondents have no standing to sue, no one would have standing," the Court stressed, "is not a reason to find standing." Schlesinger v. Reservists to Stop the War, 418 U. S. at 227; *see* United States v. Richardson, 418 U. S. at 179. Much as the lack of a better plaintiff is insufficient by itself to confer standing on a litigant, the possible availability of a better plaintiff would also appear irrelevant to the question of an individual litigant's standing to maintain a particular claim. Whenever a party's standing is challenged the question for decision is simply whether that litigant "has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." Sierra Club v. Morton, 405 U. S. at 731. In the present appeal, for instance, it might well be argued that Americans United is not as "good" a plaintiff as would be a nonsectarian educational institution that had actually applied for the award of government property in question, but lost out to the Valley Forge Christian College. Yet the fact that such an organization might make a "better plaintiff" cannot justify a denial of standing to plaintiffs here inasmuch as they in fact allege injury in fact to an individuated right protected by the Constitution.

73. Abington School Dist. v. Schempp, 374 U. S. 203 (1963); Baker v. Carr, 369 U. S. 186 (1962); *see* Schlesinger v. Reservists Comm. to Stop the War, 418 U. S. 208, 223 n. 13 (1974); United States v. SCRAP, 412 U. S. 669, 689 n. 14 (1973).

74. 369 U. S. 186 (1962).

support standing. And in *Schempp*,[75] the Court summarily affirmed the plaintiffs' standing to raise substantive challenges on the basis of the Establishment Clause. In so doing, the Court noted in particular that "the requirements for standing to challenge state action under the Establishment Clause, unlike those relating to the Free Exercise Clause, do not include proof that particular religious freedoms are infringed."[76] Moreover, in *Data Processing* the Supreme Court expressly instructed that "a spiritual stake in First Amendment values [is] sufficient to give standing to raise issues concerning the Establishment Clause."[77] This is not to suggest, however, that a litigant claiming only that a contested action deprives someone else, or the public generally, of a constitutional right has alleged a personal stake in a controversy sufficient to confer standing. Indeed, the requirement of an allegation by plaintiffs that they have suffered injury in fact "embodies a refusal by Article III courts to resolve disputes involving only generalized grievances, or only the rights or interests of third parties."[78]

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75. 374 U. S. 203 (1963).

76. *Id.* at 224 n. 9.

77. 397 U. S. at 154.

78. L. Tribe, *supra* note 36, § 3-19 at 82. *See* Note, "Standing to Assert Constitutional Jus Tertii, 88 Harv. L. Rev. 423, 428-30 (1974).

In the case of overbreadth challenges under the free speech clause of the First Amendment, the Supreme Court has extended the concept of standing to allow individuals whose conduct may be regulated or proscribed by a statute to assert that the statute is unconstitutionally overbroad with respect to third parties not before the court. Broadrick v. Oklahoma, 413 U. S. 601 (1973). Moreover, the Court has granted standing in such cases not only to one who has been charged with a violation of the statute but also to one merely threatened with such prose-

The litigants in the present appeal, however, are decidedly not ideological plaintiffs, lacking any personal stake in the controversy yet intent on adjudicating their own generalized views concerning the legality of the challenged action. On the contrary, plaintiffs here advance neither an abstract nor a generalized complaint but set forth instead a particular and concrete injury to a right that is allegedly protected by the constitutional guarantee raised. Nor do the plaintiffs rest their complaint on the claim that the disputed action deprives someone else, or the public generally, of a legal right. Their claim, rather, is that the challenged transfer of government property to a religious institution seriously injures their individual and personal constitutional right of religious liberty and separation of church and state. Unlike the general limitations at issue in *Reservists* and *Richardson*, certain other constitutional provisions, such as the First Amendment, create legal rights in individuals. Yet, unless individuals claiming an encroachment of their legal rights have some recourse other than the political process for the vindication and protection of those rights, the proud claim that individual citizens have rights against the government may be emptied of significance. As the Supreme Court has stated: "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the

78. (Cont'd.)

cution. Dombrowski v. Pfister, 380 U. S. 479 (1965). Even under this liberalized approach, however, the litigant seeking to challenge the allegedly overbroad statute must be either specifically charged or threatened with prosecution under that statute. A plaintiff not so charged or threatened but who nonetheless challenges such a statute lacks the personal stake in the outcome of the controversy for the conferral of standing. *See* Laird v. Tatum, 408 U. S. 1 (1972).

reach of majorities and to establish them as legal principles to be applied by the courts." [79]

The claim that individual citizens are entitled to judicial enforcement of their rights does not, of course, tell us exactly what Constitutional rights individuals have against the government. But plaintiffs need not establish that they actually have a legal right under the Establishment Clause to be free from the kind of governmental conduct in question. An allegation of injury in fact to an interest protected by the Establishment Clause is all that is required for standing. Only if the court determines, after consideration of the merits, that the governmental action is barred by the Establishment Clause, will it thereby recognize legal rights in the plaintiffs. It is certainly not irrelevant to the prior determination, however, that the very first words of the Bill of Rights declare that: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." [80] The two clauses do not represent separate and distinct conceptions, but a unified one; together they serve the broad common purpose of religious liberty. As a means to that end, we believe it is at the very least arguable that the

79. West Virginia State Bd. of Educ. v. Barnette, 319 U. S. 624, 638 (1943). In particular, the Court indicated that: "One's right to speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Id*

80. U. C. Const. amend. I.

As one constitutional scholar has argued: "It is no historical accident that the two religion-related guarantees of the Bill of Rights are stated as the very first provisions of that historic document. . . . the draftsmen of the Bill of Rights, working in the perspective of a history known to them all, put first things first." Jones, *Church-State Relations: Our Constitutional Heritage, in* Religion and Contemporary Society 156, 163 (H. Stahmer ed. 1963).

Establishment Clause creates in each citizen a "personal constitutional right" to a government that does not establish religion.[81] The essence of the argument, as Justice Harlan recognized, is "that freedom from establishment is a right that inheres in every citizen, thus any citizen should be permitted to challenge any measure that conceivably involves establishment." [82] As a cornerstone of our government, it may well be that the Establishment Clause should be enforceable at the demand of every individual who claims injury to an interest protected thereby. Justice Brennan, for one, has expressly rejected the suggestion that the Establishment Clause "is not one of the provisions of the Bill of Rights which in terms protects a 'freedom' of the individual. . . . The fallacy in this contention," he wrote, "is that it underestimates the role of the Establishment Clause, as a co-guarantor, with the Free Exercise Clause, of religious liberty." [83]

IV. Conclusion

One of the central purposes of judicial review is to restrain overreaching majorities from violating the rights

81. *See* Flast v. Cohen, 392 U. S. at 114 (Stewart, J., concurring).

82. *Id.* at 129 n. 18 (Harlan, J., dissenting). Justice Harlan's major difficulty with the argument was that it might be extended to certain other provisions of the constitution—*e.g.*, the Ninth and Tenth Amendments. "[A]ny doctrine of standing premised upon the generality or relative importance of a constitutional command would, [he thought], very substantially increase the number of situations in which individualized citizens could present for adjudication 'generalized grievances' about the conduct of government." He conceded that these Amendments, however, may be merely "tub[s] for the whale." And he praised such a doctrine of standing for "at least be[ing] internally consistent." *Id.*

83. Abington School Dist. v. Schempp, 374 U. S. 203, 256 (1963) (Brennan, J., concurring).

of individuals that the Constitution was designed to protect. Yet, under the defendants' view, Congress could transfer to a particular religious organization such national facilities as the Naval Observatory or the Army War College, secure in the knowledge that any individual citizen attempting to challenge such action as an abridgement of his or her rights under the Establishment Clause would not even be granted standing to make the claim. As Chief Justice Marshall wrote long ago in *Marbury v. Madison*, "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." [84] The constitutional "injury in fact" complained of by the plaintiffs here gives them a sufficient "personal stake in the outcome" to assure a complete perspective of the issues involved. And we are convinced that the interest which the plaintiffs assert and seek to safeguard here is within the zone of interests protected by the Establishment Clause.

Accordingly, the judgment of the district court dismissing the complaint for lack of standing will be reversed, and the case remanded for proceedings consistent with this opinion.

ROSENN, *Circuit Judge*, Concurring.

I agree with Judge Adams' analysis that Americans United for Separation of Church and State, Inc., (Americans United) has standing under the Establishment Clause to challenge the transfer of surplus government property to a religious organization. I write separately, however, because I believe there is an additional reason which requires that we find standing. Simply stated, I believe that the plaintiffs have standing because they possess the

84. 5 U. S. 87, 102, 1 Cranch 137, 161 (1803).

necessary adversity of interest and, as a practical matter, no one is better suited to bring this lawsuit and thus vindicate the freedoms embodied in the Establishment Clause.

The Establishment Clause, and the first amendment of which it is a part, operates to protect the rights of political minorities against abuses by political majorities. *See* J. Madison, *Memorial and Remonstrance against Religious Assessments.* Thus, the first amendment, with its protections of fundamental rights, must be enforceable by the judicial branch of government, for it is by its very nature and terms designed to protect against possible abuse by the political branch. *See West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 638 (1943).

The first amendment is different from some provisions of the Constitution which do not depend primarily upon judicial enforcement for their efficacy and where alleged violations thereof thus do not give rise to a judicially cognizable controversy. *See Schlesinger v. Reservists Committee to Stop the War*, 418 U. S. 208 (1974); *United States v. Richardson*, 418 U. S. 166 (1974).[1]

The first amendment, however, is unlike the constitutional provisions at issue in *Richardson* and *Schlesinger.*

1. In *Richardson* the Supreme Court held that the plaintiff lacked standing to bring an action seeking to enforce the provisions of Article I, § 9, cl. 7 of the Constitution. The Court stated: "It is therefore open to serious question whether the Framers of the Constitution ever imagined that general directions to the Congress or the Executive would be subject to enforcement by an individual citizen." 418 U. S. at 178 n. 11. Furthermore, the Court noted that even if a judicial remedy were unavailable, the plaintiff might still obtain relief at the polls, through the operation of the electoral process. *Id.* at 179. Similarly, the Court observed in *Schlesinger* that "[t]he assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing." 418 U. S. at 227.

There is no doubt that it is "subject to enforcement by an individual citizen." *See United States v. Richardson, supra,* 418 U. S. at 178 n. 11. Furthermore, because the first amendment is designed to protect against abuses by political majorities, it need not, and indeed must not, depend upon the political process for vindication and protection.

The fundamental nature of first amendment interests and their nonmajoritarian nature is reflected in the liberalized standing rules that have been applied to overbreadth challenges under the Free Speech Clause. Within certain constraints, one whose conduct may be permissibly regulated or proscribed may, nevertheless, assert that the statute is unconstitutionally overbroad with respect to third parties not before the court. *See Broadrick v. Oklahoma,* 413 U. S. 601 (1973). If standing were not allowed in such cases, important rights of free speech would be rendered unenforceable. The existence of an overbroad statute may deter parties not before the court from engaging in constitutionally protected conduct. That very deterrence or chilling effect might well prevent a judicially cognizable controversy from arising, thus effectively shielding the statute from review. The more effectively a statute deterred protected activity, the more likely it would be to escape judicial review. The Free Speech Clause would thereby be severely weakened.

The scope of the liberalized standing rules in the free speech area is, I suggest, governed in part by the Court's realization of the need for an available plaintiff. When an individual has himself been charged with a violation of a statute, the Court is willing to allow him to challenge it, even though his conduct is permissibly regulable, because of the Court's concern that it will not otherwise have an opportunity to examine the challenged statute. *See Broadrick v. Oklahoma, supra,* 413 U. S. at 612. The indi-

vidual charged under the statute has an obvious interest in demonstrating its validity. This assures the requisite adversity necessary for judical decisionmaking.

Statutes alleged to violate the Free Speech or Free Exercise Clauses are likely to have a perceptible impact or focus upon individual conduct. Thus, even though all citizens may be said to have a generalized interest in free speech or free exercise values, that is insufficient to confer standing. There is normally an available class of likely plaintiffs better situated to challenge the offending statute. Similarly, statutes allegedly violative of the Establishment Clause may also be directed at the regulation of individual conduct. In *Abington School District v. Schempp*, 374 U. S. 205 (1963), for example, a state statute required the reading of Bible passages to public school students. There, students and their parents brought suit, challenging the statute under the Establishment Clause. The Court found that the children and their parents were directly affected by the statute and thus had standing to complain. 374 U. S. at 224 n. 9.

Unlike statutes allegedly violative of the Free Exercise and Free Speech Clauses statutes alleged to violate the Establishment Clause may not have an individual impact sufficient to confer standing in the traditional sense. Rather, such statutes may have the more general effect or purpose of aiding religion. In such circumstances, there is not an available class of likely plaintiffs whose conduct has been or will be circumscribed by the existence of the offending statute and who will thus have standing to seek judicial review. In *Flast v. Cohen*, 392 U. S. 83 (1968), however, the Supreme Court largely filled this gap by granting taxpayer standing to those challenging actions under the taxing and spending clause of the Constitution which are alleged to violate the Establishment Clause.

In the case before us, we are presented with a statute that does not arise under the taxing and spending power. Thus, I agree that there is not taxpayer standing. Furthermore, the statute at issue here is not directed at the regulation of individual conduct. Although it is possible to conceive of economic interets that might give rise to a plaintiff who meets traditional standing requirements, that will be relatively rare and is certainly not the case here.[2] Americans United is likely to be the best available plaintiff. If they do not have standing, it is probable that the transfer of property at issue here, and other similar transfers (of which there are apparently a substantial number, maj. op. at A2) would be placed beyond judicial review. In respect to such actions, the Establishment Clause would be rendered virtually unenforceable.

It is apparent that Americans United and those four of its directors named as individual plaintiffs, possess the requisite adversity of interest necessary to insure legitimate and effective judicial decisionmaking. Americans United is a non-profit organization some 90,000 strong with a historic and documented commitment to vindication of Establishment Clause interests. As stated by its Articles of Incorporation, Americans United's purpose is

2. Judge Adams observes that:

> In the present appeal, for instance, it might well be argued that Americans United is not as "good" a plaintiff as would be a nonsectarian educational institution that had actually applied for the award of government property in question, but lost out to the Valley Forge Christian College. Yet the fact that such an organization might make a "better plaintiff" cannot justify a denial of standing to Americans United. . . .

Maj. op. at A25. I agree. I would however further observe that the record contains no indication that there was any applicant other than the appellee competing for the transfer of the property. Nor do I believe that there ordinarily will be such a "better" plaintiff.

"to defend, maintain and promote religious liberty and the constitutional principle of the separation of church and state." Organizational purpose is, by itself, normally an insufficient basis on which to rest standing. *See Sierra Club v. Morton*, 405 U. S. 727, 739 (1972). Nevertheless, in the context of the case before us, and the need to provide a judicial forum for the vindication of Establishment Clause interests, I believe that it provides an additional indication that Americans United and the individual plaintiffs meet applicable standing requirements. Accordingly, I join Judge Adams in reversing the judgment of the district court.

WEIS, *Circuit Judge*, dissenting.

The majority concedes, and I agree, that the plaintiffs do not have taxpayer standing. I also agree that the rules of standing are at best far from clear. Nevertheless, it seems to me that the grant of standing to the plaintiffs runs contra to the Supreme Court's pronouncements in this complex area of the law.

Although the Court has expanded the categories of assertible injuries to include such matters as aesthetic and environmental well-being, *United States v. Students Challenging Regulatory Agency Proceedings (SCRAP)*, 412 U. S. 669, 686-87 (1973), it has not abandoned its insistence upon the presence of "injury in fact," *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U. S. 59, 72-74 (1978). This factor has been said to be based on the necessity that the plaintiff have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult . . . questions." *Baker v. Carr*, 369 U. S. 186, 204 (1962). It has also been held at various times that injury in fact is a necessary predicate to the

Article III requirement of case or controversy. Both reasons have been subjected to critical commentary.[1]

Analysis of the raison d'etre of the injury in fact prerequisite may be interesting, but it does not provide much enlightenment in resolving standing questions. No general definition of injury in fact has been particularly conclusive, with such descriptions as "specific," "concrete," and "personal" having found their way into opinions. The cases depend to a very large extent upon their factual backgrounds, furnishing but little effective guidance for future determinations.

Out of the morass that is the American law of standing, however, several principles emerge. First, a generalized grievance brought by concerned citizens seeking to enforce a particular constitutional guarantee has been deemed too abstract to satisfy the injury in fact component of standing. *Schlesinger v. Reservists Committee to Stop the War*, 418 U. S. 208 (1974); *United States v. Richardson*, 418 U. S. 166 (1974). Second, a taxpayer's standing to promote constitutional governance has been confined to situations where a specific limitation on the congressional taxing and spending power has been alleged. This narrow opening to standing was expounded in *Flast v. Cohen*, 392 U. S. 83 (1968), where a taxpayer was granted standing to challenge an expenditure of federal funds for sectarian schools on the premise that the establishment clause is a limitation on Congress's power over the fisc. But in *United States v. Richardson, supra*, the Court rejected an attempt to expand taxpayer standing

1. *See, e.g.*, Bogen, Standing Up For *Flast:* Taxpayer and Citizen Standing to Raise Constitutional Issues, 67 Ky. L. J. 147 (1978); Davis, Standing: Taxpayers and Others, 35 U. Chi. L. Rev. 601 (1968). *See also* United States Parole Commission v. Geraghty, — U. S. —, —, 48 U. S. L. W. 4296, 4302 (U. S. March 19, 1980) (Powell, J., dissenting).

to reach disputes over issues other than the taxing and spending power because of a lack of any causal connection between plaintiff's status and the asserted injurious conduct.

In the case at bench, the majority essentially finds a different kind of "citizen standing" derived from "a shared individuated right to a government that 'shall make no law respecting the establishment of religion.'" Manuscript at 17. Although there is respected scholarly commentary approving that approach, it does not find support in the United States Reports.

In *Flast v. Cohen, supra,* Justice Fortas, in a concurrence, floated the idea that "[p]erhaps the vital interest of a citizen in the establishment issue, without reference to his taxpayer's status, would be acceptable as a basis for this challenge." 392 U. S. at 115-16. It is obvious that there were not enough votes approving this concept, for otherwise the majority would not have found it necessary to construct the complicated and detailed formula it used to bypass the venerable prohibition against taxpayer standing. Certainly, the opinion would have been simpler had a majority of the Court approved the Fortas concept.

It does not suffice to say that the *Flast* Court was limited by the plaintiffs' pleadings to a consideration only of the taxpayer issue. In the three-judge district court, Judge Frankel, in dissent, urged that the plaintiffs be given standing, not because they alleged that their tax dollars were being distributed unconstitutionally, but because they were asserting violations of the establishment clause—the same argument made by the majority here. *See Flast v. Gardner,* 271 F. Supp. 1, 11-13 (S. D. N. Y. 1967). In their brief filed with the Supreme Court, moreover, the *Flast* plaintiffs disclaimed that their principal motive was to keep taxes down. They sued, in their words,

> "to prevent a pocketbook injury but only because that is part of what they deem a much graver injury, an injury to the right to live under a government which separates itself strictly from the church and church affairs."

Brief for Appellant at 37.

> The briefs of several amici reflect the same approach:
>
> "[T]he rights advanced here are not primarily monetary in nature. . . . [T]he dominant inducement for this action is the protection of individual and social freedom. . . ."

Brief for National Council of Churches at 9.

> "Thus, as Judge Frankel suggested, an economic analysis of the plaintiff's interest is inappropriate in a case of this kind. *Ibid.* The proper analysis must comprehend the nature of the rights confirmed by the Establishment Clause, and the identity of the party upon whom these rights are conferred. . . . [T]he plaintiffs in this case, as citizens, contend that the Elementary and Secondary Education Act infringes the rights conferred upon them by the First Amendment. Their status as injured citizens, and nothing else, gives them the requisite interest to maintain their suit."

Brief for Americans for Public Schools at 8. It cannot be said, therefore, that the Supreme Court was not strongly urged to adopt the theory that the majority here now advances.

If as the majority suggests, however, the *Flast* Court felt itself bound by the pleadings, then that same limitation must necessarily apply to us as well. The amended complaint, upon which the district court reached its deci-

sion, identifies the plaintiffs as "taxpayers." The corporate plaintiff is described as an organization of taxpayers, and each individual is listed as a taxpayer who "would be deprived of the fair and constitutional use of his (her) tax dollar for constitutional purposes in violation of his (her) rights under the First Amendment . . ." (App. 9.)

The *Flast* complaint also identified the plaintiffs as taxpayers and protested the use of federal funds to finance instruction in sectarian schools. Thus, there is no substantial difference between the two complaints, certainly none that would permit consideration of citizen standing in one case and not in the other.

The plaintiffs do not allege any direct injury that the transfer of the property has inflicted upon them or any direct benefit that will accrue to them as a result of the requested judicial action. Their freedom of religion is not alleged to be affected in any respect. Rather, the complaint alleges that the granting of the property is a violation of the establishment clause and asks that the conveyance be declared void or that the college be required to return the property to the government. Neither of these actions would directly affect any of the plaintiffs.

The lack of cognizable injury to the plaintiffs places them in the same posture as those in *Schlesinger v. Reservists Committee to Stop the War, supra.* There, the Court reiterated the requirement that the party seeking review must himself have suffered an injury and said: "Abstract injury is not enough." *Id.* at 219, *quoting O'Shea v. Littleton,* 414 U. S. 488, 494 (1974). That holding was made in the face of a complaint that sought to force members of Congress to act in conformity with the incompatibility clause—"an interest shared by all citizens." *Id.* at 217. "[T]hat claimed nonobservance, standing alone, would adversely affect only the generalized interest

of all citizens in constitutional governance, and that is an abstract injury." *Id.* (footnote omitted).

Similarly, in *United States v. Richardson, supra,* the Court repeated the necessity for the plaintiffs' allegations of "particular concrete injury as a result of the operation of this statute," *id.* at 177, the statute in question being one authorizing private accounting by the Central Intelligence Agency. In that case the Court took pains to dispel the notion that standing should be conferred simply because if the plaintiff could not litigate the issue, no one could. *Id.* at 179. As the *Richardson* majority observed, such a situation supports the argument that the issue is one "committed to the surveillance of Congress, and ultimately to the political process." *Id.*

I, for one, am unwilling to believe that Congress, responsive as it is to public opinion, is likely to give away either the Naval Observatory or the Army War College.[2] To my mind, the *Schlesinger* and *Richardson* observations apply just as clearly to the generalized complaints of the plaintiffs here. Accordingly, I can find no principled basis for distinguishing the cases.

In light of this authority, I do not find persuasive the argument that the establishment clause creates a right capable of being enforced by all citizens. As Justice Harlan indicated in his *Flast* dissent, premising standing on a hierarchical view of constitutional commands would increase, without any logical basis, "the number of situations in which individual citizens could present for adjudication 'generalized grievances about the conduct of

2. The Valley Forge hospital was originally constructed in 1942 to treat wounded servicemen during World War II. As one real estate appraiser wrote, "[T]hese buildings were constructed several years ago for one purpose only, that is for an army hospital, and it is my feeling that they have little or no use, generally speaking, for other purposes." (App. 242.)

government.'" 392 U. S. at 129-30 n. 18, *quoting id.* at 106 (majority opinion). Nor do other cases relied on by the majority support its position. Both *Abington School District v. Schempp*, 374 U. S. 203 (1963), and *Baker v. Carr, supra*, are readily distinguished because the plaintiffs there suffered particularized injuries. In *Schempp*, the parents and their children were directly affected by the presence of classroom prayer. And in *Baker*, the harm alleged was the devaluation of plaintiffs' individual votes. *See* L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 3.19, at 86-87 (1978).

The majority has embraced a concept of standing presented to the Court in 1968 and not accepted by it at that time, or since. If the basic principles of standing prove to be unworkable or undesirable, then it is the Supreme Court and not a court of appeals that has the right to change them. *See Hicks v. Miranda*, 422 U. S. 332, 343-45 (1975). I find no indication in *Reservists* and *Richardson* that the Court has gone beyond what *Flast* contained, and I would therefore affirm the district court.

Order of the United States District Court for the Eastern District of Pennsylvania, Americans United For Separation of Church and State, Inc., Andrew Leigh Gunn, Edward E. Doerr, Gioele Settembrini, and E. Mallary Bins, Plaintiffs v. The United States Department of Health, Education and Welfare, The United States of America, and Valley Forge Christian College, Defendants, Civil Action No. 77-1321, Filed December 15, 1978.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 77-1321

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC. ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, AND E. MALLARY BINNS,

Plaintiffs

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE THE UNITED STATES OF AMERICA, AND VALLEY FORGE CHRISTIAN COLLEGE,

Defendants

ORDER

AND Now, this 15th day of December, 1978, after consideration of the arguments and briefs of counsel, the

motions of defendant Department of Health, Education and Welfare to dismiss the complaint and of defendant Valley Forge Christian College for summary judgment are granted for the reason that plaintiffs lack standing to maintain this action.

1. The only basis advanced by the individual plaintiffs in support of their claim to standing is their status as taxpayers; the only basis advanced by the organizational plaintiff in support of its claim to standing is the status of its members as taxpayers;

2. It is well established that in order to achieve taxpayer standing, plaintiffs' cause of action must be a challenge to a Congressional exercise of the taxing and spending power, U. S. Const. Art. I, § 8. *Flast v. Cohen*, 392 U. S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968).

3. Plaintiffs challenge is to a transfer of property pursuant to the Federal Property and Administrative Services Act of 1949, 40 U. S. C. § 471 et seq.

4. A transfer of property pursuant to the Federal Property and Administrative Services Act is an exercise of Congressional property power, U. S. Const., Art. IV, § 3, cl. 2; see *United States v. Cassiagnol*, 420 F. 2d 868, 876 (4th Cir.), cert. denied, 397 U. S. 1044, 90 S. Ct. 1364 (1970); *Kern Copters, Inc. v. Allied Helicopter Service, Inc.*, 277 F. 2d 308, 313 (9th Cir. 1960).

5. Since plaintiffs do not challenge an exercise of Congressional taxing and spending power, they lack standing to maintain this action; *Flast v. Cohen*, supra; *Mease v. Heinz*, No. 78-1106 (E. D. Pa. Oct. , 1978).

6. Plaintiffs have also failed to allege that they have suffered any actual or concrete injury beyond a generalized grievance common to all taxpayers; for this reason

also, plaintiffs lack standing to bring this action; see *Schlesinger v. Reservists Committee to Stop the War*, 418 U. S. 208, 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1975); *Mease v. Heinz*, supra.

By THE COURT:

J. WILLIAM DITTER, JR.,
J.

12/15/78
Copy TO:
J. T. Action, Esq.
R. S. Forster, Esq. (Asst. U. S. Atty.)
Ball & Skelly
C. C. Hodgson, Esq.

Judgment of the United States Court of Appeals for the Third Circuit, Americans United for Separation of Church and State, Inc., Gunn, Andrew, Leight, Doerr, Edward D., Settembrini, Gioele, Binns, E. Mallary, Appellants v. The United States Department of Health, Education and Welfare, The United States of America, Northeast Bible College, a/k/a Valley Forge Christian College, No. 79-1221, Dated April 8, 1980.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-1221

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., GUNN, ANDREW, LEIGH, DOERR, EDWARD D., SETTEMBRINI, GIOELE, BINNS, E. MALLARY,

Appellants

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION and WELFARE, THE UNITED STATES OF AMERICA, NORTHEAST BIBLE COLLEGE, A/K/A VALLEY FORGE CHRISTIAN COLLEGE

(D. C. Civil Action No. 77-1321)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: ADAMS, ROSENN and WEIS, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel on October 12, 1979 and reassigned February 7, 1980.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed December 15, 1978, be, and the same is hereby reversed and the cause remanded for further proceedings consistent with the opinion of this Court. Costs taxed against appellees.

ATTEST:

/s/ THOMAS F. QUINN
Clerk

April 8, 1980

Order Denying Petition for Rehearing En Banc of the United States Court of Appeals for the Third Circuit, Americans United for Separation of Church and State, Inc., et al, Appellants v. The United States Department of Health, Education and Welfare, et al. No. 79-1221, Dated June 3, 1980.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-1221

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., et al,
Appellants

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, et al.

SUR PETITION FOR REHEARING EN BANC

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS, GARTH, HIGGINBOTHAM and SLOVITER, *Circuit Judges.*

The petition for rehearing filed by Appellee, Valley Forge Christian College, in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit

judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By THE COURT,

/s/ ARLIN M. ADAMS,
Circuit Judge

Dated: June 3, 1980

United States Constitution, Relevant Articles and Amendments.

ARTICLE I, SECTION 8, CLAUSE 1

The Congress shall have Power

To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; . . .

ARTICLE III, SECTION 2, CLAUSE 1

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. . . .

ARTICLE IV, SECTION 3, CLAUSE 2

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Federal Property and Administrative Services Act of 1949, 40 U. S. C. § 471 et seq. (1970), Relevant Provisions.

40 U. S. C. § 484. Disposal of surplus property—Supervision and direction

(a) Except as otherwise provided in this section, the Administrator shall have supervision and direction over the disposition of surplus property. Such property shall be disposed of to such extent, at such time, in such areas, by such agencies, at such terms and conditions, and in such manner, as may be prescribed in or pursuant to this Act. . . .

(k)(1) Under such regulations as he may prescribe, the Administrator is authorized, in his discretion, to assign to the Secretary of Health, Education, and Welfare for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary of Health, Education, and Welfare as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research.

(A) Subject to the disapproval of the Administrator within thirty days after notice to him by the Secretary of Health, Education, and Welfare of a proposed transfer of property for school, classroom, or other educational use, the Secretary of Health, Education, and Welfare, through such officers or em-

ployees of the Department of Health, Education, and Welfare as he may designate, may sell or lease such real property, including buildings, fixtures, and equipment situated thereon, for educational purposes to the States and their political subdivisions and instrumentalities, and tax-supported educational institutions, and to other nonprofit educational institutions which have been held exempt from taxation under section 101(6) of Title 26. . . .

(C) In fixing the sale or lease value of property to be disposed of under subparagraph (A) and subparagraph (B) of this paragraph, the Secretary of Health, Education, and Welfare shall take into consideration any benefit which has accrued or may accrue to the United States from the use of such property by any such State, political subdivision, instrumentality, or institution. . . .

Office-Supreme Court, U.S.
FILED
APR 29 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-327

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

VALLEY FORGE CHRISTIAN COLLEGE, *Petitioner,*

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.

AND

THE UNITED STATES DEPARTMENT OF EDUCATION, THE UNITED STATES OF AMERICA, *Respondents.*

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 30, 1980.
CERTIORARI GRANTED FEBRUARY 23, 1981.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

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The following orders, opinion and judgment have been omitted in printing this Appendix as they appear on the following pages in the Appendix to the printed Petition for Certiorari:

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. C.A. 76-2258

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., GUNN, ANDREW LEIGH; DOERR, EDWARD E.; SETTEMBRINI, GIOELE; BINNS, E. MALLARY, *Plaintiffs,*

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA, *Defendants.*

CAUSE
28 USC 1346
INJUNCTION
Illegal Granting of Property

DATE	FILINGS—PROCEEDINGS
1976	
Dec 8	COMPLAINT; appearance; attachments (5).
Dec 8	SUMMONS, copies (4) and copies (4) of complaint issued: #1 ser 12/10/76 Atty Gen ser 12/10/76; AUSA ser 12/9;
Feb 8	ANSWER by defts. to complaint; c/m 2-8-77. Appearance of William H. Briggs, Jr.
Feb 8	CALENDARED CD/N
Mar 23	STATUS CALL. Oral motion of pltfs. and defts. to transfer case to the U.S. District Court for the Eastern District of Pennsylvania argued and granted. (Rep: P. Merana) Bryant, C.J.
Mar 24	CONSENT ORDER filed on 3-23-77 directing Clerk to transmit case to the U.S. District Court for the Eastern District of Pennsylvania. (N) Bryant, C.J.

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. C.A. 77-1321

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., GUNN, ANDREW LEIGH; DOERR, EDWARD E.; SETTEMBRINI, GIOELE; BINNS, E. MALLARY, *Plaintiffs,*

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA, NORTHEAST BIBLE COLLEGE, AKA VALLEY FORGE CHRISTIAN COLLEGE, *Defendants.*

CAUSE
Transfer from District of Columbia
28 USC 1346
Illegal Granting of Property

DATE	FILINGS—PROCEEDINGS
1977	
Apr 14	Original record received from U.S. District Court for the District of Columbia (C.A. 76-2258) along with certified copies of docket entries, filed.
May 6	Appearance of John T. Action Esq on behalf of the plff, filed.
Jun 20	Plffs motion to amend complaint, filed. (Amended complaint attached).
Jul 12	Order, Ditter J., dated 7/7/77 Granting motion to Amend, filed. 7/13/77 entered & copies mailed. WD
Jul 12	AMENDED COMPLAINT FILED.
Jul 12	Summons on AMENDED COMPLAINT EXIT.

DATE	FILINGS—PROCEEDINGS

1977

Aug 3 Appearance of Robert S. Forster Jr., Asst U.S. Atty on behalf of Federal Defts, filed.

Aug 18 Summons on Amended complaint returned "on 7/20/77 served Rev O.L. Harrup Sr.",/filed.
Pres NE Bible College aka Valley Forge Christian College

Oct 3 Answer of Valley Forge Christian College to amended complaint, filed.

Oct 31 Plffs' interrogatories to deft., U.S. Dept. of H.E.W., filed.

Oct 31 Plffs' interrogatories to Deft. Valley Forge Christian College, filed.

Nov 16 Withdrawal of appearance of William H. Briggs Jr. Asst. U.S. Atty. on behalf of H.E.W., filed.

Dec 16 Answers of deft., U.S. Dept. of HEW to plffs' interrogatories, under Rule 33 with certificate of service, filed.

Dec 19 Appearance of C. Clark Hodgson Jr., and Georganne Daher Terrill on behalf of deft., Valley Forge Christian College as Co-Counsel, filed.

Dec 19 Deft., Valley Forge Christian College's suggestion of substitution of name pursuant to Rule 17, FRCP, filed.

1978

Jan 25 Answers of Valley Forge Christian College to plffs' interrogatories, filed.

Feb 3 Interrogatories and request for production of documents of Vailey Forge Christian College to plff., Americans United for Separation of Church and State, Inc., filed.

Feb 3 Defts notice to depose Andrew Leigh Gunn, et al, filed.

DATE	FILINGS—PROCEEDINGS

1978

Feb 13 Report Ditter J. of pre-trial conf. of 2-2-78, & order that on 2-3-78 Valley Forge will file interrogatories, plff will answer by 3-1-78, plff will be deposed by 3-10-78, defts will file motions to dismiss by 4-30-78, plffs will file response to same by 5-30-78, etc, filed. (Copy) 2-14-78 entered & copies mailed.

Feb 21 Deft Valley Forge Christian College's amended notice to depose Andrew Leigh Gunn, filed.

Mar 15 Answer to Plff Americans United for Separation of Church and State to interr., of Valley Forge Christian College, filed.

May 1 Motion of Valley Forge Christian College for summary judgment, filed.

May 1 Affidavit of Lois M. Sparklin re: annual reports on program activities etc., filed.

May 2 Defts motion to dismiss plffs for lack of standing, memo., in support, cert. of service, filed.

May 15 Affidavit of Richard A. Coffman re: Exhibit A, filed.

May 23 Affidavit of William J. Sheehan Re "EXCESS PROPERTY", filed.

June 19 Plffs brief in reply to the memorandum of Dept of HEW in support of its motion to dismiss plffs for lack of standing and in reply to Valley Forge Christian College's brief in support of its motion for summary judgment, filed.

June 19 Plffs answer to motion of Dept of HEW to dismiss plffs for lack of standing, filed.

June 19 Plffs answer to motion of Valley Forge Christian College for summary judgment, filed.

July 25 Plffs' interrog., to deft., HEW under Rule 33, filed.

DATE	FILINGS—PROCEEDINGS

1978

July 25 Plffs' interrog., to Valley Forge Christian College under Rule 33, filed.

Aug 25 Plffs' notice of changes in deposition pursuant to F.R.C.P. Rule 30(e) of Andrew L. Gunn, Edward E. Doerr, Gioele Settembrini, and E. Mallary Binns, filed.

Sep 6 Deposition of E. Mallary Binns, filed.

Sep 6 Deposition of Gioele Settembrini, filed.

Sep 6 Deposition of Andrew L. Gunn, filed.

Sep 6 Deposition of Edward E. Doerr, filed.

Sep 19 ARGUED SUR: defts motion to dismiss and motion for summary judgment both motions C.A.V. . . . filed. WD

Nov 9 Transcript of September 18, 1978, filed.

Dec 15 ORDER DTD. 12/15/78 THAT THE MOTIONS OF HEW TO DISMISS AND OF DEFT. VALLEY FORGE CHRISTIAN COLLEGE FOR SUMMARY JUDGMENT ARE GRANTED FOR THE REASON THAT PLFFS. LACK STANDING TO MAINTAIN THIS ACTION, FILED. WD
12/15/78 ENTERED AND COPIES MAILED.

1979

Jan 8 Plffs notice of appeal received on 1/8/79 at 12PM, filed. 1/8/79 entered & copies to Lee Boothby Esq., Robert S. Forster Jr., AUSA., Ball & Skelly Esq; C. Clark Hodgson Jr., Esq.,

Jan 8 Copy of Clerk's notice to United States Court of Appeals, filed.

Jan 26 ORIGINAL RECORD TRANSMITTED TO U.S.C.A. (Papers #19, 20, 21, 24 & 26 not included) #79-1221

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. C.A. 79-1221

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., GUNN, ANDREW LEIGH; DOERR, EDWARD D.; SETTEMBRINI, GIOELE; BINNS, E. MALLARY, *Appellants,*

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA, NORTHEAST BIBLE COLLEGE, AKA VALLEY FORGE CHRISTIAN COLLEGE, *Appellees.*

DATE	FILINGS—PROCEEDINGS
1979	
Feb 20	Copy of Notice of Appeal, received January 9, 1979, filed. Record, received January 26, 1979, filed. (Papers #19, 20, 21, 24, & 26 not included). Appearance of John T. Acton, Esquire for appellants, filed. Appearance of Lee Boothby, Esquire for appellants, filed.
Feb 22	Appearance of Robert S. Forster, Jr., Esq. for appellees, The United States Department of Health, Education and Welfare and the U.S.A., filed.
Feb 26	Appearance of C. Clark Hodgson, Jr. and Georganne Daher Terrill, Esqs.; Stradley, Ronon, Stevens & Young for appellee, Northeast Bible College, AKA Valley Forge Christian College, filed.
Feb 28	Appearance of William B. Ball, Esq.; Ball & Skelly for appellees, filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. C.A. 77-1321

AMERICANS UNITED FOR SEPARATION OF
CHURCH AND STATE, INC.,
8120 Fenton Street
Silver Spring, Maryland 20910;
ANDREW LEIGH GUNN,
16712 Frontenac Terrace
Derwood, Maryland 20855;
EDWARD E. DOERR,
3018 Aquarius Avenue
Silver Spring, Maryland 20906;
GIOELE SETTEMBRINI,
Route 3, Box 338-C
Annapolis, Maryland 21403;
and
E. MALLARY BINNS,
3612 Sleepy Hollow Road
Falls Church, Virginia 22041, *Plaintiffs,*

v.

THE UNITED STATES DEPARTMENT OF
HEALTH, EDUCATION AND WELFARE,
and
THE UNITED STATES OF AMERICA
and
NORTHEAST BIBLE COLLEGE, AKA
VALLEY FORGE CHRISTIAN COLLEGE,
Phoenixville, Pennsylvania 19460
Serve: The Rev. O. L. Harrup, Sr., President
Defendants.

AMENDED COMPLAINT
(Filed 7/12/77)

Jurisdiction

1. This action arises under the First Amendment of the Constitution of the United States, the Establishment Clause, as hereinafter fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.

Parties

2. Corporate Plaintiff, Americans United for Separation of Church and State, Inc., is a nonprofit organization whose purpose is described in its title. It is incorporated in the District of Columbia and has over 90,000 members nationwide, all of whom are taxpayers. Each of these taxpayer members will be affected just as though they were each a separate individual plaintiff in this action, and each individual member would be deprived of the fair and constitutional use of his (her) tax dollar for constitutional purposes in violation of his (her) rights under the First Amendment of the United States Constitution.

3. Andrew Leigh Gunn is a citizen of the United States and of the state of Maryland and is a taxpayer of the United States.

4. Edward E. Doerr is a citizen of the United States and of the state of Maryland and is a taxpayer of the United States.

5. Gioele Settembrini is a citizen of the United States and of the state of Maryland and is a taxpayer of the United States.

6. E. Mallary Binns is a citizen of the United States and of the state of Virginia and is a taxpayer of the United States.

7. The United States Department of Health, Education and Welfare is a department of the United States Government.

8. The United States Government was the former owner and transferor of the property in question and is joined to

defend on behalf of itself and on behalf of the United States Department of Health, Education and Welfare.

9. The Northeast Bible College is a theological school, chartered under the name of Eastern Bible Institute on January 6, 1939. Its primary purpose is the training of ministers, missionaries and Christian workers. Having received in 1975 provisional recognition from the Commonwealth of Pennsylvania to grant the Bachelor of Science in Bible degree, the name was changed from Northeast Bible Institute to the present name of Northeast Bible College.

First Claim

10. The United States, through its Department of Health, Education and Welfare, has granted to the Northeast Bible College, the property known as the Valley Forge Army Hospital, consisting of seventy-seven (77) acres of land, having thereon seventy (70) buildings, and having a value of $1,307,730 more or less. This property is located in the Commonwealth of Pennsylvania and was the property of the United States of America.

11. Upon information and belief, plaintiffs believe that Northeast Bible College is designed to train ministers, missionaries and Christian education workers for and on behalf of the Assemblies of God Church.

12. The granting of property or other financial assistance to such college is a violation of the Establishment Clause of the First Amendment of the Constitution of the United States of America which states, "Congress shall make no law respecting the establishment of religion . . ."

Equitable Relief

13. Plaintiffs have no plain, adequate or complete remedy at law to redress the grievances alleged herein and suffer, and will continue to suffer, great, immediate, and irreparable harm unless the Court grants relief as hereinafter prayed.

WHEREFORE, plaintiffs pray:

1. That the Court declare the grant of land and buildings in Pennsylvania to the Northeast Bible College as a violation of the First Amendment of the Constitution of the United States, and therefore, void such transfer.

2. That the Court order the Northeast Bible College to convey the right, title and interest to all of that property known as the Valley Forge Army Hospital which it received by quit claim deed dated August 3, 1976, back to the United States Government, or to declare the transfer of government-owned land to the said college null and void.

3. That the Department of Health, Education and Welfare and the United States of America be enjoined temporarily and permanently from making a grant of this and other property to the Northeast Bible College, its successors or assigns, so long as such a grant will violate the Establishment Clause of the Constitution of the United States.

4. That the plaintiffs be granted their costs and attorneys' fees and such other and further relief as is merited.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 77-1321

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, AND E. MALLARY BINNS, *Plaintiffs,*

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA, AND NORTHEAST BIBLE COLLEGE, AKA VALLEY FORGE CHRISTIAN COLLEGE, *Defendants.*

ANSWERS OF THE DEFENDANT UNITED STATES DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE TO PLAINTIFFS' INTERROGATORIES UNDER RULE 33, FEDERAL RULES OF CIVIL PROCEDURE

(Filed 12/16/77)

1. In regard to the person answering these interrogatories, state his or her: (a) Name; (b) Address; (c) Title and position with the defendant.

Answer: (a) C.A. Patterson

(b) 330 Independence Avenue, S.W.
Washington, D.C. 20201

(c) Acting Director, Office of Real Property,
Office of Facilities Engineering,
Department of Health, Education, and Welfare.

2. Please list the names of all persons involved in the negotiations leading to the granting of the property known as the Valley Forge Army Hospital to Northeast Bible College, and give their titles, and their present locations.

Answer:

HEW-Region III

Eugene G. Link, Regional Program Director (RPD), Region III, DHEW (deceased)

Hazel M. Haine, Assistant RPD, Region III, DHEW (deceased)

E. Louise Wiegman, RPD, Region III, DHEW, Gateway Building, 36th and Market Streets, Philadelphia, Pa. 19101

Tom Horn, former Assistant RPD, Region III, DHEW (transferred to Region III, General Services Administration in compliance with P.L. 94-519; current office address: Room 9200, 600 Arch Street, Philadelphia, Pa. 19102

Francine Riccio, Realty Specialist, Region III, DHEW, 36th and Market Streets, Philadelphia, Pa. 19101

George C. Putnam, Assistant Regional Director for Administration and Management, DHEW, Region III, 36th and Market Streets, Philadelphia, Pa. 19101

HEW-Washington

Joe N. Everett, Chief, Real Property Division, Office of Federal Property Assistance, DHEW, Washington, D.C. (retired; living at 3525 Military Road, Arlington, Virginia)

C.A. Patterson, Acting Director, Office of Real Property, Office of Facilities Engineering, DHEW, 330 Independence Ave., S.W., Washington, D.C. 20201

Glynn D. Corry, Acting Chief, Division of Realty, Office of Real Property, Office of Facilities Engineering, DHEW, 330 Independence Ave., S.W., Washington, D.C. 20201

Lois M. Sparklin, Realty Specialist, Division of Realty, Office of Real Property, Office of Facilities Engineering, DHEW, 330 Independence Ave., S.W., Washington, D.C. 20201

3. Please state the date of the transfer of the said property to Northeast Bible College and furnish a copy of the instrument used in such transfer, i.e., the deed.

Answer: August 3, 1976 (copy of deed is attached).

4. Please state whether there were any other contracts or agreements with Northeast Bible College regarding the use of the property and, if so, provide a copy of each such contract or agreement.

Answer: Agreements concerning use of the property are contained in the application and deed. (Copy of application is attached.)

5. Please state specifically whether there are any agreements or understandings which would restrict this property to secular use or limit the sectarian use of the said property by the Northeast Bible College, any of its successors in interest, its affidavits, or other persons, organizations or institutions, and

(a) If the answer to the above is in the affirmative, give the particulars and copies of the agreement(s) pertaining thereto.

Answer: There are no specific restrictions against other than secular uses. However, the uses proposed in the application were all that are approved; others might be considered excluded by omission.

(a) See deed and application.

6. Please state whether any provisions have been made to enforce any of the agreements heretofore mentioned, and if so, state specifically what these provisions are.

Answer: Enforcement is assured through annual reports required by deed condition and by on-site visits.

Respectfully submitted,

/s/ C. A. PATTERSON
C. A. Patterson

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action
No. 77-1321

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, AND E. MALLARY BINNS, *Plaintiffs*,

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA, AND NORTHEAST BIBLE COLLEGE, AKA VALLEY FORGE CHRISTIAN COLLEGE, *Defendants*.

PLAINTIFFS' INTERROGATORIES TO DEFENDANT VALLEY FORGE CHRISTIAN COLLEGE UNDER RULE 33, FEDERAL RULES OF CIVIL PROCEDURE

(Filed 10/31/77)

Now comes plaintiff, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and requests that the defendant Valley Forge Christian College answer the following interrogatories under oath, within 45 days after service hereof, and supplement their answers at any time prior to final determination that further information called for comes to their knowledge. (All questions propounded to Valley Forge Christian College apply equally to any predecessory named institution.)

1. In regard to the person answering these interrogatories, state his or her:

(a) Name;

(b) Address;

(c) Title and position with the defendant.

2. Please list all previous names under which Valley Forge Christian College has operated since its inception in 1939, and

(a) Give address(es) at which the institution was located prior to moving to its present location.

3. Is the college a church-related college?

(a) If so, state in detail in what respects the college is church-related;

(b) If not, why does the defendant assert that the college is not church-related?

4. (a) State the primary objectives of the college;

(b) State any other objectives of the college.

5. As to the Board of Regents of the college, please state:

(a) The names and religious denominations and/or affiliations of each current member of the Board of Regents;

(b) The names, and religious denominations and/or affiliations of each member of the Board of Regents for each year from January 1974 until the present time;

(c) The names of each member of the Board of Regents from January 1974 until the present time, who was or is a member of the clergy of any church or religious group or organization and further state as to each:

i. The denomination with which he or she is affiliated and his or her position therewith;

ii. The inclusive dates during which he or she served on the Board.

6. State in detail the method of selection of members of the Board of Regents, including information as to the following:

(a) By whom members are selected;

(b) How members are selected, elected or appointed;

(c) Whether, as a matter of rule or policy, adherence to or profession of a religious belief or membership in a religious organization is, or ever has been, a prerequisite to membership on the Board, and if so, further state:

i. What percentage of the Board is required to be affiliated with a particular church or denomination;

ii. With what particular church or denomination affiliation is a prerequisite;

iii. Whether these requirements are in writing, and if so, the title of the writing;

iv. The beginning and ending dates, where appropriate, during which such policies have been in effect.

7. As to the Administration of the college, please state:

(a) The names and religious denominations and/or affiliations of each current member of the Administration;

(b) The names, and religious denominations and/or affiliations of each member of the Administration for the years beginning January 1974 until the present time;

(c) The names of each member of the Administration beginning in January 1974 until the present time, who was or is a member of the clergy of any church or religious group or organization and further state as to each:

i. The denomination with which he or she is affiliated and his or her position therewith;

ii. The inclusive dates during which he or she served in the Administration.

8. State in detail the method of selection of members of the Administration, including information as to the following:

(a) By whom members are selected;

(b) How members are selected, elected or appointed;

(c) Whether, as a matter of rule or policy, adherence to or profession of a religious belief or membership in a religious organization is, or ever has been, a prerequisite to membership in the Administration;

(d) What percentage of the Administration is required to be affiliated with a particular church or denomination;

(e) With what particular church or denomination is affiliation a prerequisite;

(f) Whether these requirements are in writing and the title of the writing;

(g) The beginning and ending dates during which such policies have been in effect.

9. As to the faculty of the college, please state:

(a) The name and religious denomination and/or affiliation of each current member of the faculty;

(b) The name and religious denomination and/or affiliation of each member of the faculty for the school years 1974-75 until the present time;

(c) The name of each member of the faculty beginning with the school year 1974-75 until the present, who was or is a member of the clergy of any church or religious group or organization, and further state as to each:

i. The denomination with which he or she is affiliated and his or her position therewith;

ii. The inclusive dates during which he or she served on the faculty.

10. State in detail the method of selection of members of the faculty, including information as to the following:

(a) By whom members are selected;

(b) How members are selected, elected or appointed;

(c) Whether, as a matter of rule or policy, adherence to or profession of a religious belief or membership in a religious

organization is, or ever has been a prerequisite to membership on the faculty;

(d) What percentage of the faculty is required to be affiliated with a particular church or denomination;

(e) With what particular church or denomination is affiliation a prerequisite;

(f) Whether these requirements are in writing and the title of the writing;

(g) The beginning and ending dates during which such policies have been in effect;

(h) Whether there have been any changes in the policies of the college as to qualifications regarding religious affiliation of prospective faculty members, and if so,

i. state new policy as well as the old policy.

11. State whether or not there is now or ever has been a requirement or policy, written or otherwise, that anyone affiliated with a non-Christian religion will not be employed on the faculty of the college, and if the answer is negative, state:

(a) Whether any persons professing to be non-Christians have ever been employed on the faculty, and if so;

i. What are their names;

ii. When were they employed;

iii. What did they teach.

12. State if there is now or ever has been a requirement or policy, written or otherwise, that atheists will not be employed on the faculty of the college, and if the answer is negative, state:

(a) Whether any persons professing to be atheists have ever been employed on the faculty, and if so;

i. What are their names;

ii. When were they employed;

iii. What did they teach.

13. Has the college ever inquired, either on an employment application, or other written inquiry, or orally, the religious affiliation of prospective faculty members, and if so, please state:

(a) Whether this is a standard policy for all applicants;

(b) If (a) is answered affirmatively, during what period has the policy been in effect;

(c) The purpose of the policy;

(d) If (a) is answered negatively, on what occasions such an inquiry is made;

(e) If (a) is answered negatively, why the inquiry is (was) made on the particular occasions listed in (d) above.

14. Since January 1974 until the present time, were any faculty or staff members ever disciplined, dismissed, or requested to resign for conduct or statements considered to be unacceptable by the college because of their anti-religious or immoral content, or for professing beliefs contrary to the doctrine of the Assemblies of God Church, and if so, please state for each such occasion:

(a) The nature of each such incident of conduct or statement involved;

(b) The reason that each such conduct or statement was considered objectionable;

(c) The nature of the disciplinary action;

(d) The approximate date on which the discipline, dismissal or request to resign occurred.

15. Does the college employ a chaplain, and if so, state:

(a) Whether there is a requirement, written or otherwise, that the chaplain be of a particular faith or denomination;

(b) If the answer to (a) is affirmative, the particular faith or denomination;

(c) If the answer to (a) is negative, the faith or denomination of each chaplain employed by the defendant college since the college was founded.

16. As to the student body of the college, please state:

(a) For each academic year beginning with 1974-75 until the present, the religious preference breakdown of the student body;

(b) Whether as a matter of rule or policy, adherence to or profession of a religious belief or membership in a religious organization has ever been a prerequisite to admission to the college, and if so, further state:

i. The inclusive dates during which the policy was in effect;

ii. For what religious belief, tenet or church or religious organization the requirement was in effect;

iii. Whether this requirement is in writing, and if so, the name or title of the writing, its location and the name of the person having custody thereof.

17. In regard to the admission of students, please state:

(a) Whether the college ever shows preference to the children of the clergy or of missionaries;

(b) Whether the college ever shows preference to the children of the clergy or of missionaries of a particular faith or denomination, and if so, what faith or denomination;

(c) Whether the college ever shows preference to the children of alumni.

18. Has the college, since January 1974, granted tuition and/or fee reductions to the children of faculty members, clergy, or missionaries attending as students, and if so, please state:

(a) When such policy was (or has been) in effect;

(b) The amount of concession or reduction per student.

19. Beginning with the 1974-75 school year through the present time, please state whether or not the college has offered scholarships and/or grants to students, and if so, please state:

(a) Title of each scholarship and/or grant;

(b) Source of each scholarship and/or grant, and indicate whether or not it is restricted and if so, state what the restrictions are.

20. Please state the name of each student who has received scholarship and/or grant aid beginning with the 1974-75 school year until the present time, listing the name of the scholarship or grant, date and amount of same, and the religious affiliation of each student recipient.

21. In regard to admission applications, please state whether students are required to furnish references from a clergyman and/or Christian religious leaders, and if so, state:

(a) Whether an applicant is rejected for consideration if he or she is unable to provide such references.

22. In considering application for admission, please state whether the college requires a statement from the prospective student regarding his or her personal religious convictions and religious experiences, and if so, please specify the questions asked of the applicant.

23. Please state whether the college has different requirements as to religious experience and/or religious background for day students and resident students, and if so, please explain.

24. As to each student attending the college for the 1977-78 school year, please state:

(a) His or her name;

(b) The identity of each student's religious affiliation as reported on their admission application form.

25. List all of the degree and certificated programs offered to prospective students, from the 1974-75 academic year until the present time.

26. Please provide copies of all publications distributed to prospective students beginning with the academic year 1974-75 until the present time.

27. Please provide copies of all publications distributed to prospective contributors to the college, beginning with the academic year 1974-75 until the present time.

28. Please provide copies of all college publications directed toward alumni, friends of the college, or parents of students at the college, bearing any title and/or issued for any reason, beginning with the academic year 1974-75 until the present time.

29. For each academic year beginning with 1974-75 until the present time, list all guest speakers who have visited the college, and state the topic of their speech or talk.

30. Of recipients of honorary degrees awarded by the college (if any) during the years 1974 through the present time, please state:

(a) The number awarded;

(b) The number awarded to members of the Assemblies of God Church members;

(c) The number awarded to members of the clergy of the Assemblies of God Church.

31. Between January 1974 and the present time, has the Assemblies of God Church or any of its representatives through the college Board of Regents ever attempted to influence parietal regulations such as the drinking of alcoholic beverages on the campus, dormitory visitation policies, con-

tent of the student newspaper, and if so, please state as to each attempt:

(a) The regulations or policies which the Assemblies of God Church attempted to influence;

(b) The results of the attempt;

(c) The approximate date on which each such attempt occurred.

32. Between January 1974 and the present, has the college enforced a student dress code, and if so, please state whether or not this code is dictated by the doctrines and teachings of the Assemblies of God Church.

33. In the formulation of policy decisions by the college administration, are the policy and philosophy of the Assemblies of God Church considered, and if so, please state to what extent.

34. If the college has a Doctrinal Statement, please state same.

35. During the academic years 1974-75 through the present, has the college ever required student attendance at any meetings (other than baccalaureate services) wherein prayer has taken place, and if so, please specify the nature of and frequency of such meetings.

36. Please identify and list, giving the dates (when appropriate) and titles of all periodic religious functions, holidays, assemblies, celebrations or services conducted by the college since the academic year 1974-75 until the present, and as to each state whether attendance by all or part of the student body was either required or checked.

37. Please state whether faculty meetings and other types of meetings wherein the faculty are expected to attend, normally begin and/or close with prayer.

38. Please state whether classes normally begin and/or close with prayer.

39. During the years 1974-75 through the present time, please state whether the college has required students to participate in "Christian activities," and if so, please specify the nature of and frequency of such activities.

40. Where a student objects to requirements to take courses in religion, please state whether the college ever waives such requirements and if so, state the circumstances under which such requirements are waived.

41. Are there grounds for dismissal of students for other than academic insufficiency, and if so, please specify such grounds and state whether these are dictated by the doctrines and teachings of the Assemblies of God Church.

42. Please state whether the college requires any religious assignments to be completed by the students (other than classroom subjects) as a requirement for graduation, and if so, please specify the number and nature of such assignments.

43. State whether a student's acceptance of the doctrine of the Assemblies of God Church and or Christian doctrine is a requirement for graduation.

44. State as to each academic year beginning with 1974-75 until the present, what percentage of the graduates of the college have:

(a) Entered the ministry;

(b) Become missionaries;

(c) Become Christian education workers.

45. State as to each academic year beginning with 1974-75 until the present, what percentage of the graduates of the college have:

(a) Become ministers, missionaries or Christian education workers of the Assemblies of God Church;

(b) Become ministers, missionaries or Christian education workers of any other denomination.

46. List all buildings which are presently used for religious functions, and state specifically in what way these buildings have been used for religious functions, whether the use is periodic or continuing, and what the primary use of the building is.

47. Please state whether the college maintains, or has maintained since January 1974, a policy of making the college facilities available to groups either during the regular year or during the summer vacation or other vacations, and if so, please state:

(a) Whether religious groups are given preference in any manner with respect to the use of college facilities and if so, in what manner;

(b) Whether groups representing the Assemblies of God Church are given preference with respect to use of any of the college facilities;

(c) Whether the college ever operates the academic program involved and allows religious groups to share facilities (classrooms, buildings, cafeterias, dormitories or other facilities) with regularly enrolled Valley Forge Christian College students.

(d) Whether groups representing any other religious denomination have been invited to make such use of the college facilities;

(e) Whether any non-religious groups or organizations have been invited to make such use of the college facilities;

(f) If the answer to (e) above is affirmative, please state,

i. The name of the group or organization;

ii. The date and purpose of such use.

48. (a) In its payment of Federal and state taxes, please state whether the college has ever, since January 1974, claimed exemption from payment of income tax, inheritance

tax, tangible and intangible personal property tax, real property tax or gift tax under §501(c)(3) of the Internal Revenue Code, or any other Federal or state law or regulation, on the basis, in whole or in part, of its religious nature as an institution or the use of buildings or property for religious purposes.

(b) If the answer to (a) above is in the affirmative, please state,

i. The statute or regulation upon which the exemption was based;

ii. The specific reason the exemption was claimed;

iii. The date on which the exemption was claimed;

iv. The amount of the exemption claimed;

(c) If the answer to (a) above is in the affirmative, please provide:

i. copy(ies) of such application(s) for exemption;

ii. copy(ies) of any amendment(s) to such application(s), if filed.

49. State the name of each clergyman or person of the cloth, and each church or other group, organization, corporation, foundation or institution of religious identification or purpose which has given financial assistance or other assistance to the college at any time since January 1974, and as to each donor, state separately for each gift:

(a) The date of each such gift;

(b) The form of the gift (money, donation, buildings, scholarships, personal services, etc.);

(c) If a money donation, the amount in dollars;

(d) If the assistance was other than a money donation, identify by name the donation (i.e., if a building, the name of the building; if a service, the specific type of service performed), and state the approximate value of the gift at the time of the donation;

(e) The nature of any restriction of any gifts by donors which relegated the assistance in any way to religious use.

50. State as to each year since January 1974:

(a) The total amount of money, goods, and services received by the college;

(b) The total amount of money, goods, and services received by the college which was from churches or other organizations of religious identification or purpose;

(c) The total amount of money, goods, and services received by the college from organizations that are not religiously affiliated such as private corporations or foundations;

(d) The total amount of money, goods and services received from any political subdivisions, including Federal, state or local governments;

(e) Under (c) and (d) above please further state separately for each gift:

i. The date of each such gift, and the amount;

ii. The form of the gift (money, donation, buildings, scholarships, or personal services, etc.);

iii. If the assistance was other than a money donation, identify by name the donation, (i.e., if a building, the name of the building, if a service, the specific type of service performed, etc.) and state the approximate value of the gift at the time of the donation.

51. In case of corporate dissolution, please state who are the intended recipients of the assets of Valley Forge Christian College, (i.e., to which person(s) and in what proportions would the assets be distributed in the case of dissolution).

Respectfully submitted this _____ day of _____, 1977.

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Attorneys for
Plaintiffs Americans United, et al.

IN THE UNITED STATES DISTRICT COURT
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AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, AND E. MALLARY BINNS, *Plaintiffs*,

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA, AND VALLEY FORGE CHRISTIAN COLLEGE, *Defendants*.

ANSWERS OF DEFENDANT VALLEY FORGE CHRISTIAN COLLEGE TO PLAINTIFFS' INTERROGATORIES

(Filed 1/25/78)

1. (a) Dr. O. L. Harrup, Sr.

(b) Valley Forge Christian College of the Assemblies of God
P.O. Box 810
Phoenixville, PA 19460

(c) President

2. (a) Eastern Bible Institute from Jan. 1939 to Aug. 1962, Green Lane, Pa.; Northeast Bible Institute from Aug. 1962 to May 1975, Green Lane, Pa.; Northeast Bible College from May 1975 to January 1, 1977, Green Lane, Pa., when it became Valley Forge Christian College.

3. Yes.

(a) The college owns its own property, but is affiliated with the Assemblies of God.

(b) Not Applicable.

4. (a) The purpose of Valley Forge Christian College is to offer systematic training on the collegiate level to men and women for Christian service as either ministers or laymen. Therefore, educational opportunities are provided for those who would enter into full-time study and those who wish to take only specialized courses.

(b) In addition, the College seeks to provide a living and learning experience in the Judaic-Christian tradition, in order to fulfill the whole person, with emphasis on his or her spiritual, intellectual, cultural, and physical development. Other objectives of the College are:

1. *Spiritual:* To inspire students to develop and maintain a sensitivity to the ministry of the Holy Spirit so that both the fruit and the gifts of the Spirit may be manifested through them in an outreach to the lost.
2. *Academic:* To provide an adequate curriculum of biblical professional, and general education which will aid the student to think logically, critically, and meaningfully and which will broaden his knowledge of God, man, society, and the physical world.
3. *Practical Ministry:* To provide for the participation of every student in practical Christian work as a part of learning.
4. *Character and Personality Development:* To develop character committed to sound Christian ethics and cultivate a well-adjusted personality.
5. *Cultural:* To develop an appreciation for cultural refinements, social graces, and civic responsibilities.
6. *Physical:* To place proper emphasis on physical development with due recognition of the body as the temple of God.

5. (a) All members of the Board of Regents are affiliated with the Assemblies of God. They are: Rev. R. D. E. Smith, Chairman, Binghamton, NY, Rev. Edward S. Berkey, Vice

Chairman, Springfield, MA, Rev. Albert W. Earle, Secretary, Newark, NJ, Rev. Hardy W. Steinberg, Springfield, MO, Rev. O. L. Harrup, Sr., Phoenixville, PA, Mr. Angelo C. Ferri, Yardley, PA, Rev. Russell Williams, Camp Hill, PA, Rev. Phillip Bongiorno, Harrisburg, PA, Rev. Clifford E. Lewis, Camp Hill, PA, Mr. Claude Galletta, Newtown Square, PA, Rev. Anthony DiQuattro, Belleville, NJ, Rev. John G. Leardi, Reading, PA, Rev. Robert Organ, Jamesburg, NJ, Rev. John Paproski, Trenton, NJ, Rev. Frederick Huber, Roselle, NJ, Mr. Joseph Mabey, Hackettstown, NJ, Rev. Al Bartholomew, Syracuse, NY, Dr. A. Glen Everhart, Gloversville, NJ, Rev. Charles A. Thomas, East Aurora, NY, Rev. Samuel R. DiTrolio, Portland, ME, Rev. Peter Miller, Portsmouth, NH, Rev. Donald G. Kroah, Portland, ME, Mr. William Perkins, Portsmouth, NH, Rev. Wallace P., Odum, Sr., Fairfax, VA, Rev. T. Burton Pierce, Fairfax, VA, Mr. Jacob E. Hershman, PH.D., Alexandria, VA, Mr. John V. Slye, Arlington, VA, Rev. Howard Spruill, Silver Spring, MD, Rev. Rayder O. Jacobsen, Auburn, MA, Rev. Hugh Corey, Auburn, MA, Mr. Charles A. Roberts, Somers, CT, Rev. James L. Travis, Salem, NJ, Rev. Arthur Parsons, Columbus, OH, Rev. R. D. Dobbins, Columbus, OH, Rev. Robert M. Graber, Canton, OH.

(b) All members named in answer to Question 5(a) have served since 1974. In addition, the following persons who are affiliated with the Assemblies of God, served during 1974 and 1975: Rev. W. H. Roberson, Abington, PA, Rev. Frank DeMarco, East Hanover, NJ, Rev. Joseph R. Flower, Springfield, MO, Mr. Stanley J. Benjamin, Babylon, NY, Mr. Francis LaMay, Wayne, ME, Mr. John Zanella, Rockville, CT.

(c) See answers to interrogatories 5(a) and 5(b).

6. The Board of Regents of Valley Forge Christian College consists of four members from each participating district of the Assemblies of God. They are chosen by their respective district presbyteries. The Executive Director of the Depart-

ment of Education of the Assemblies of God, the president of the college, and an executive officer of the Alumni Association are members of the Board of Regents by virtue of their offices.

(c) (i) 100%.

(ii) Assemblies of God.

(iii) Yes; in the constitution and by-laws of Valley Forge Christian College.

(iv) 1939-1977.

7. (a) Each member listed hereafter is affiliated with the Assemblies of God: Rev. John Paproski, Superintendent of the New Jersey District, Rev. O. L. Harrup, Sr., President, Valley Forge Christian College, Rev. A. McDearmid, Academic Dean, Valley Forge Christian College, Rev. A. Reuben Hartwick, Dean of Students, Valley Forge Christian College, Mr. Charles Brown, Business Manager, Valley Forge Christian College.

(b) In addition to those named in 7(a), the following named are affiliated with the Assemblies of God: Rev. H. M. Strickland, Rev. Hobart Grazier, Rev. Hugh B. Mason.

(c) (i) Assemblies of God.

(ii) Rev. John Paproski (current), Rev. O. L. Harrup, Sr. (1972-1977), Rev. A. McDearmid (1975-1977), Rev. A. R. Hartwick (1969-1977), Rev. H. Strickland (1972-1975), Rev. H. Grazier (1975), Rev. H. Mason (1972-1977).

8. (a) and (b) The Board of Regents appoints the President. The Board of Regents or the Board of Directors may either appoint or confirm the President's selection of the Academic Dean, the Dean of Students and the Business Manager.

(c) Yes. Affiliation with the Assemblies of God is a prerequisite to membership in the Administration.

(d) 100%.

(e) Assemblies of God.

(f) Yes; the constitution and by-laws of Valley Forge Christian College.

(g) 1939-1977.

9. (a) and (b) Hobart E. Grazier, Esther L. Harrup, A. Reuben Hartwick, Andrew M. McDearmid, Bernice L. McDearmid, Loren J. McRae, Robert E. Ott, Edward B. Reardon, Juris V. Reneslacis, Dorsey Reynolds, Chester C. Roberson, Bernard Rossier, Alta E. Shiner, Robert E. Tourville, Claire M. Watkins, Ezra B. Watkins, Bernice Doersom, Ruth Ava Parker, John Weber, Lorie Stetler, Robert W. Cherry, William Crew and Harold Brasch are affiliated with the Assemblies of God, Mae Wint is Pentecostal, Benjamin L. Nase, Evangelical, Carl Glover and Paul Jones who are Methodists.

(c) (i) and (ii) Rev. O. L. Harrup, Sr. (1972-1977), Rev. A. McDearmid (1975-1977), Rev. R. Hartwick (1969-1977), Rev. G. Fortunato (1963-1976), Rev. K. Levin (1975-1976), Rev. R. Tourville (1961-1964, 1967-1977), Rev. A. Shiner (1964-1977), Rev. H. Strickland, Sr. (1972-1976), Rev. H. Grazier (1954-1962, 1964-1977), Rev. R. Ott (1967-1967), Rev. C. Roberson (1962-1977), Rev. T. Morris (1960-1970), Rev. R. Beisel (1938-1977), Rev. B. Doersom (1962-1977), Rev. E. Harrup (1974-1977), Rev. L. McRae (1975-1977), Rev. J. Reneslacis (1975-1977), Rev. B. Rossier (1976-1977).

10. (a) The Academic Dean, President, or the Board of Administration.

(b) Applications are received by the Dean. The applicant is interviewed and selected by the Dean, President and Board of Administration, appointments are approved by the Board of Regents.

(c) The College requires its faculty members to have been baptized in the Holy Spirit and be living consistent Christian lives.

(d) None.

(e) None.

(f) Yes; Faculty Handbook.

(g) 1939-1977.

(h) Many years ago, the College required its faculty to be affiliated with the Assemblies of God.

11. No negative statement is made; see answer to interrogatory 10(c).

12. (a) No negative statement is made; see answer to interrogatory 10(c).

13. (a) Yes.

(b) 1939-1977.

(c) To obtain an appreciation of the applicant's background to evaluate whether or not the applicant's appointment to the faculty will fulfill the College's objectives.

(d) Not applicable.

(e) Not applicable.

14. No.

15. The college does not employ a chaplain.

16. (a) On the average, the religious affiliations of the student body between 1974 and 1977 on the average has been: 58% Assemblies of God; 42% fourteen other denominations.

(b) Yes.

(i) 1939-1977.

(ii) Applicants for the day school are expected to have at least an interest in the Christian faith; any interested applicant may be enrolled in evening courses.

(iii) No.

17. (a) (b) and (c) No preference is shown to any qualified student who seeks admission to the College.

18. Defendant objects to interrogatory No. 18. The tuition and, or fee reduction policy of the college is irrelevant to any issue in this lawsuit.

19. Defendant objects to interrogatory No. 19. The college's scholarship and, or grant policy with respect to its students is irrelevant to any issue in this litigation.

20. Defendant objects to interrogatory No. 20. The names of the students receiving scholarship or grant aid are irrelevant to any issue in this litigation. In addition, defendant objects on the grounds that to the extent that the interrogatory requires defendant to disclose the names of students who received scholarship or other aid on the basis of financial need, such information is confidential; the names of the students should not be made a matter of record in this action.

21. Boarding students must provide character reference from a clergyman or a Christian friend. Non-boarding students need only supply character reference from a reliable person. A person without a good character reference will not be admitted.

22. Yes. When and where were you converted? Have you backslidden since being converted? If so, when were you reclaimed? Have you been baptized in the Holy Spirit according to Acts 2:4? When? If not, describe your present attitude: Earnestly seeking ( ) Passively interested ( ) Not informed about this ( ) What church do you attend? Are you a member?

23. Yes. Those whose academic and personal qualifications indicate they will profit from the program offered are accepted. Admission to VFCC is granted to applicants meeting the school's admissions requirements without regard to race, color, national origin, or denomination.

Students of all faiths may attend the college as day students provided they are of good moral character and are willing to

abide by all the rules of the college. Resident students must have a born again experience and be of good moral character.

24. See lists attached as "Exhibit A".

25. The College grants a Bachelor of Science in Bible Degree (which, during the 1974-75 academic year, was called a Four-Year Certificate of Graduation), the Standard Teacher's Diploma, and a Three-Year Certificate of Graduation.

26. A copy of the current catalog is attached as Exhibit "B". No copies of catalogs from prior years are available.

27. Defendant objects to interrogatory No. 27. Publications distributed to prospective contributors to the college are wholly irrelevant to any issue in this litigation.

28. Defendant objects to interrogatory No. 28 on the ground that copies of college publications directed towards alumni, friends of the college and the like is irrelevant to any issue in this litigation. Defendant further objects on the grounds that the documents requested by interrogatory No. 28 which "bear any title and/or issued for any reason" is vague, and does not permit the defendants to sufficiently identify the material requested.

29. Defendant objects to interrogatory No. 29 on the ground that it is impossible to provide a list of all guest speakers who have visited the college in the current and previous two academic years. Defendant further objects on the ground that the identity of guest speakers and the topic of their speech or talk is irrelevant to any issue in this litigation.

30. The college does not award honorary degrees.

31. No. The college is self governing; it sets its own policy, rules and regulations.

32. The college has a student dress code. The code is not dictated by the doctrines and teachings of the Assemblies of God Church. The college, which sets its own standards, requests female students to wear modest clothing, reflecting

Christian character. Pants suits (but not jeans) are acceptable for class. Culottes or similar attire and sneakers are required for gym classes.

Male students are required to wear neat clothing. Dress suits as well as sport shirts for casual wear are necessities. Neckties, turtlenecks or leisure suits are required for chapel and classes. Gym shoes are required for Physical Education classes and games.

33. Defendants object to interrogatory No. 33 on the ground that the terms "policy and philosophy" are vague and ambiguous. Notwithstanding the foregoing objection Valley Forge Christian College owns its own property, sets its own standards and is affiliated with the General Council of the Assemblies of God.

34. The College has a doctrinal statement; the following summarizes some of the fundamental truths believed and taught at the Valley Forge Christian College:

1. The Bible is the Word of God, the infallible rule of faith and practice for all men. It is superior to conscience and reason, although not contrary to reason.
2. There are three persons in the Godhead — Father, Son, and Holy Spirit. These are one as to nature. They are each co-eternally self-existent, yet none can exist without the others.
3. The Son of God, who was in the beginning God with God, for the sake of man became man and was called Emmanuel — that is, God with man.
4. "By one man sin entered into the world, and death by sin; and so death passed upon all men, for that all have sinned."
5. Jesus Christ, the Lord of glory, being crucified, tasted death for all men; He arose from the dead, and ascended to the Father. Whosoever repents and believes in Him may have eternal life.

6. Man is justified by faith in Jesus Christ, apart from works.

7. The Son of God baptizes believers with the Holy Spirit for life and service.

8. Holiness of life is the result of the believer's identification with Christ in His death, resurrection, and present throne-life in glory. It is attained by faith in the Lord Jesus Christ as the Sanctifier through the power of the Holy Spirit.

9. Jesus Christ is the physician of His People. By His atonement He purchased deliverance from every sickness, and by His Spirit effects healing as men believe.

10. The imminent return of Christ out of heaven to this earth is the blessed and living hope of all believers.

11. The subjugation to Christ of all rule and all authority is the ultimate purpose of the revelation of Jesus Christ.

12. "They which are written in the Lamb's Book of Life" shall enter into the holy city, New Jerusalem. But "whosoever was not found written in the Book of Life was cast into the lake of fire."

35. Yes; students attend meetings at which prayer is offered on the average of four times weekly.

36. Defendant objects to the terms "religious functions, holidays, assemblies, celebrations or services" on the ground that the words used are vague, ambiguous and indefinite. Notwithstanding the foregoing objection, the college is closed for Thanksgiving, Easter and Christmas.

37. Yes.

38. Individual teachers are free to start a class with prayer; there is no rule.

39. Each student is required to participate in Christian activities, which include working with drug addicts, and alcoholics in youth centers, singing for the mentally retarded, canvassing, conducting story hours and street meetings, ministering in old folks' homes, walking mentally retarded children, working in surrounding churches and working with physically handicapped children. A student is expected to participate 35 times in four years.

40. There has never been an objection.

41. Yes. A student can be expelled for committing a crime or engaging in any anti-social practice which would disrupt the academic function of the college. These grounds are not dictated by the doctrines and teachings of the Assemblies of God Church.

42. Defendant objects to interrogatory No. 42 on the grounds that term "religious assignments" is vague, ambiguous and indefinite.

43. No.

44. (a) In 1975, 44% (18 graduates); in 1976, 46% (20 graduates); in 1977, 32% (26 graduates) entered the ministry.

(b) None.

(c) In 1975, 12% (5 graduates); in 1976, 16% (7 graduates); in 1977, 11% (9 graduates) became teachers.

45. (a) In 1975, 51% (21 graduates); in 1976, 41% (18 graduates); in 1977, 32% (26 graduates) became ministers, or teachers in schools affiliated with the Assemblies of God church; there were no missionaries.

(b) in 1975, 5% (2 graduates); in 1976, 21% (9 graduates); and in 1977, 11% (9 graduates) became ministers or teachers in church-related schools. There were no missionaries.

46. Defendant objects to interrogatory No. 46 for the reason that the words "religious functions" is vague, ambiguous and indefinite.

47. Yes.

(a) and (b) Defendant objects to the words "religious group" as used in interrogatory 47(a) on the ground that the words are vague, ambiguous and indefinite. Notwithstanding that objection, no group has been given preference.

(c) Defendant objects to the use of the words "religious groups" as used in interrogatory No. 47(c) on the grounds that the words are vague, ambiguous and indefinite.

(d) Yes.

(e) Defendant objects to the words "non-religious groups or organizations" on the grounds that the words are vague, ambiguous and indefinite.

48. (a) No. The college claims and has received its exemption as an education institution.

(b) and (c) Inapplicable.

49. Defendant objects to interrogatory No. 49 on the grounds that the information sought is irrelevant, and imposes an unreasonable burden upon defendant to collect information respecting each person who has given financial subsistence to the college since 1974.

50. Defendant objects to interrogatory 50 on the ground that to supply the information is burdensome. Defendant would be compelled to employ or divert special clerical help to collect the data sought by this interrogatory. Defendant attaches hereto its auditor's statement for the year ending June 30, 1976.

51. Defendant objects to interrogatory No. 51 on the ground that it is speculative.

/s/ WILLIAM B. BALL
William B. Ball

/s/ C. CLARK HODGSON, JR.
C. Clark Hodgson, Jr.

/s/ GEORGANNE DAHER TERRILL
Georganne Daher Terrill

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215-569-3800

Of Counsel:
BALL & SKELLY
127 State Street
Harrisburg, PA

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF :

OBIE L. HARRUP, SR., being first duly sworn according to law, deposes and says that he is the President of the Defendant Valley Forge Christian College and that as such he is authorized to take this affidavit on its behalf; the facts set forth in the foregoing answers of defendant Valley Forge Christian College to plaintiffs' interrogatories are true and correct to the best of his knowledge, information and belief.

OBIE L. HARRUP, SR.

Sworn to and subscribed
before me this ____ day
of _____ 1978

_____
Notary Public

EXHIBIT A

VALLEY FORGE CHRISTIAN COLLEGE
STUDENTS ENROLLED 1977-78
DENOMINATIONAL AFFILIATION

ABBOTT, David	Assemblies of God
ABELL, Patricia	Assemblies of God
ACKER, William	Moravian
ADAIR, Dennis	Assemblies of God
ADAMS, Michael	Assemblies of God
ADEY, Marianne	Assemblies of God
ALBANESE, Joyce Annette	Assemblies of God
ALBANESE, Joyce Ann	Assemblies of God
ALBANI, John	Assemblies of God
ANDERSON, Susan	Assemblies of God
ANDERSON, Walter	Assemblies of God
ANDRAEAS, Alan	Independent
ARMSTRONG, Richard	Assemblies of God
ARROWSMITH, Alan	Assemblies of God
AUMANN, Donna	Assemblies of God
BADEAU, Lorraine	United Methodist
BALDWIN, Douglas	Assemblies of God
BALLIET, David	Assemblies of God
BARBER, Bonnie	Christian Church of North America
BARBER, Mary Beth	Assemblies of God
BARBER, Timothy	Christian Church of North America
BARNETT, Johnny	Assemblies of God
BATTAGLIO, Theodore	Assemblies of God
BEARD, Florence	United Church of Christ
BEDFORD, Harold	Assemblies of God
BEDFORD, E. Lynn	Assemblies of God
BELLOLI, Thomas	Assemblies of God
BENNETT, Clarence	Assemblies of God
BENNETT, Douglas	Assemblies of God
BENNETT, Robert	Assemblies of God
BENTON, Connie	Assemblies of God

BERCAW, Randy	Assemblies of God
BERG, Lonnie	Presbyterian
BERRY, Michael	Assemblies of God
BONGIOVANNI, Karen	Christian Church of North America
BOTTS, Nancy	Assemblies of God
BOUCHER, Mark	Assemblies of God
BRACALIELLO, Jo Lee	Assemblies of God
BRADY, Meredith	Assemblies of God
BRAUN, Thomas	Assemblies of God
BRENNAN, Nancy	Assemblies of God
BROADWATER, James	Assemblies of God
BROOKINS, John	Assemblies of God
BROOKS, Daniel	Assemblies of God
BROWN, Brian	Assemblies of God
BROWN, Gregory	Methodist
BROWN, Rita	Assemblies of God
BRYSON, Debra	Assemblies of God
BUCKINGHAM, Jon	Assemblies of God
BAILEY, Gary	Assemblies of God
BELL, Clarence	Baptist
BUDZ, Elaine	Assemblies of God
BUNCH, Freddie	Assemblies of God
BURKHOLDER, June	Assemblies of God
BUTTERFIELD, Lewis	Assemblies of God
BYNUM, John	Assemblies of God
CALLAHAN, Sandra	Pentecostal
CAMPBELL, Marylin	Assemblies of God
CANALES, Sigmund	Assemblies of God
CANFIJN, Wilfried	Assemblies of God
CAPERTON, James	Assemblies of God
CARDONA, Michael	Assemblies of God
CARDONA, Rosemarie	Assemblies of God
CARPER, Randy	Assemblies of God
CARR, Susan	Independent Pentecostal
CARSTENS, William	Church of God
CARTER, Lynette	Assemblies of God
CARTER, Richard	Presbyterian

CARUANA, Christine	Christian Church of North America
CASSIDY, Catherine	Assemblies of God
CATAPANO, Richard	Assemblies of God
CERCE, Timothy	Independent
CHAMBERLAIN, Paul	Assemblies of God
CHANNEL, Corine	Assemblies of God
CHANNEL, Jack	Assemblies of God
CHEGWIN, Stephen	Assemblies of God
CHIODO, Lois	Christian Church of North America
CHONG, Hong	Assemblies of God
CHUA, Leocadio	United Methodist
CLYMER, Dorcas	Assemblies of God
COBBETT, Bonnie	Assemblies of God
COFFEY, Debra	Assemblies of God
COHEN, Harvey	Assemblies of God
COLLIER, David	Assemblies of God
COMENZO, James	Christian Church of North America
CONROY, Roxene	Assemblies of God
COOK, Robert	Christian Church of North America
COOK, Shirley	Assemblies of God
COOK, Michael	Assemblies of God
COOK, Phillip	Church of God
COOK, Timothy	United Methodist
CORAN, Carol	Assemblies of God
CORLEY, Robert	Assemblies of God
COSTANZA, Julius	Church of God
COSTELLO, Louise	Assemblies of God
COSTELLO, Robert	Assemblies of God
COTE, Arnold	Assemblies of God
COVER, Darrell	Assemblies of God
CRAPO, Nancy	Baptist
CRAPO, Raymond	United Presbyterian
CREW, Lillian	Assemblies of God
CROMACK, Kerry	Assemblies of God

CRUZ, Eva	Church of God
CUDDAHEE, Daniel	Assemblies of God
CUOCO, Joseph	Assemblies of God
DAHLEM, William	Assemblies of God
DAVIS, Deborah	Assemblies of God
DAVIS, George	Assemblies of God
DAVIS, Stephen	Assemblies of God
DEAN, Kerry and Roxanne	Assemblies of God
DECKER, David	Assemblies of God
DEEM, Danny	Assemblies of God
DEEM, Jeffrey	Assemblies of God
DEITZ, Scott	Evangelical Congregational
DE JONGH, Edward	Assemblies of God
DE MARTINO, Richard	Assemblies of God
DE SILVIO, Toni	Assemblies of God
DICKEN, William	Assemblies of God
DICKEY, Steven	Assemblies of God
DIETRICH, Ruth	United Presbyterian
DIMINO, Andrea	Assemblies of God
DI SARRO, Andrew	Pentecostal
DI TROLIO, David	Assemblies of God
DONAHUE, William	Assemblies of God
DON GIOVANNI, Francine	Christian Church of North America
DOUD, Mary Ann	Roman Catholic
DOWNS, Cassandra	Non-denominational
DUCKWORTH, Joyce	Assemblies of God
DYER, Cherryl	Assemblies of God
DYER, Earlene	Assemblies of God
EARLEY, Donald	Assemblies of God
ECKMAN, Patricia	Assemblies of God
EDNIE, Bonnie	Assemblies of God
EMERSON, Sharon	Assemblies of God
EPLER, Timothy	Independent Pentecostal
FAIN, Samuel	Assemblies of God
FARLEY, David	United Methodist
FARLEY, Patrick	United Methodist
FARMER, Yvonne	Assemblies of God

FARRELL, Lorraine	Assemblies of God
FARRINGTON, Phillip	Assemblies of God
FELLER, Vicki	Assemblies of God
FISCHER, David	United Methodist
FITZPATRICK, David	Independent
FITZWATER, Norma	Assemblies of God
FLORIO, Donna	Christian Church of North America
FONDA, Kathy	Assemblies of God
FORKEY, Keith	Assemblies of God
FORMICA, Thomas	Assemblies of God
FOSTER, Gene	Assemblies of God
FOX, Sharon	Assemblies of God
FRAIN, Sandra	Assemblies of God
FRANCO, John	Christian Church of North America
FRANK, David	Assemblies of God
FRAZIER, Ronald	Holiness
FREUDENBERGER, George	Church of God
FRISCHKORN, Deborah	Independent
GABOUR, Gina	Assemblies of God
GAGAS, William	Assemblies of God
GARLAND, Pamela	Assemblies of God
GARREN, Doreen	Assemblies of God
GARRIGUS, Alfred	Non-denominational
GAUTIER, Alice	Assemblies of God
GAUTIER, Anna	Assemblies of God
GEIGER, Thomas	Assemblies of God
GIARRATANO, Theresa	Assemblies of God
GILBERT, Marlene	Assemblies of God
GOLDSCHMIDT, Wilbur	Assemblies of God
GRAHAM, Wayne	Assemblies of God
GRANHOLM, Steven	Assemblies of God
GRANHOLM, Susan	Assemblies of God
GRAVEL, Sylvie	Pentecostal
GRAY, Dianne	Assemblies of God
GRAY, Sharon	Assemblies of God
GRECO, David J.	Assemblies of God

GRECO, David M.	Assemblies of God
GREGOR, Steven	Assemblies of God
GRIFFIN, Spencer	Assemblies of God
GROVE, Robert	Assemblies of God
GRUBBS, Sylvia	Assemblies of God
HAILEY, Theresa	Nazarene
HALEY, Debra	Assemblies of God
HAMMAKER, Mark	Assemblies of God
HARDY, Denis	Assemblies of God
HARPER, John	
HARPER, Sharon	Assemblies of God
HARRIS, Carol	Non-denominational
HARRIS, Joseph	
HARRISON, Earl	Full Gospel
HASTEDT, Patricia	Nazarene
HAY, Debra	Assemblies of God
HERNANDEZ-BURGOS, Evelyn	Assemblies of God
HERNANDEZ-BURGOS, Claudio	Inter-denominational
HETTINGER, Janice	Assemblies of God
HICKS, Joseph	Independent
HICKS, Ruth	Assemblies of God
HILL, Jennifer	Assemblies of God
HINRICHSEN, Eugene	Assemblies of God
HOCHMAN, Sherri	Assemblies of God
HOCKADAY, Ardine	Church of God in Christ
HODGE, Celeste	Baptist
HODGEMAN, Leonard	Assemblies of God
HOLLEN, Joseph	Assemblies of God
HOLLIS, William	Assemblies of God
HORNBAKER, Scott	Assemblies of God
HORNE, Madeline	Assemblies of God
HOUCK, Elizabeth	Assemblies of God
HUBBARD, Gregory	Assemblies of God
HUFF, Katherine	Assemblies of God
HYNSON, Vincent	United Methodist
IANNUCCILLI, Robert	Assemblies of God

IANNUCCILLI, Steven	Assemblies of God
IENUSO, Richard	Christian Missionary Alliance
IMLER, Galen	Assemblies of God
JAOUEN, Maxime	Assemblies of God
JAOUEN, Sally	Assemblies of God
JOHNSON, Albert	Assemblies of God
JOHNSON, Cathy	Assemblies of God
JOHNSON, Charles	Assemblies of God
JOHNSON, Cynthia Lynn	Non-denominational
JOHNSON, David	Independent Pentecostal
JOHNSON, Gail	Assemblies of God
JOHNSON, Kevin	Assemblies of God
JOHNSON, Shirley	Assemblies of God
JOHNSON, Barbara	Assemblies of God
JONES, Todd	Assemblies of God
JUMP, Sheryl	Assemblies of God
JURKOVICH, Sandra	Assemblies of God
KAMINSKI, James	Assemblies of God
KELCHNER, Sharon	Assemblies of God
KELIAR, Andrew	Assemblies of God
KEMMERER, Janice	Assemblies of God
KIEL, Nora	
KILLORAN, Gail	Assemblies of God
KING, R. Paul	Assemblies of God
KINLEY, Saundra	Assemblies of God
KIRK, William	Pentecostal
KITCHEN, H. Joy	Assemblies of God
KITNER, Charles	Assemblies of God
KOMARNITZKI, Evanne	Assemblies of God
KORDON, James	Assemblies of God
KORDON, John	Pentecostal
KRAGL, Patricia	Assemblies of God
KRAUSE, David	Christian Church of North America
KROAH, Dawn	Assemblies of God
KULISH, Ruth	Assemblies of God
KURING, Hans	Assemblies of God
LACEY, Donna	Assemblies of God

LAFFERTY, W. Norman	Assemblies of God
LAIRD, Kenneth	Assemblies of God
LANE, Michael	Messianic Judaism
LANGFORD, David	Assemblies of God
LANSBERRY, Anna	Assemblies of God
LAUVER, Walter	Assemblies of God
LEDBETTER, Donald	Assemblies of God
LE DUC, Raul	Assemblies of God
LEHIGH, Marijo	Assemblies of God
LESSING, Louise	Assemblies of God
LESTER, Marvin	Assemblies of God
LEWIS, Daniel	Assemblies of God
LEWIS, John R.	Assemblies of God
LEWIS, Shirlena	Assemblies of God
LIVESAY, Lori	Assemblies of God
LLOYD, Diane	Assemblies of God
LOMBARDO, Julie	Assemblies of God
LOVELAND, Deborah	Assemblies of God
LUFT, Clifford	Assemblies of God
LUPOLI, Susan	Non-denominational
LUSE, Shelby	Assemblies of God
LUTTRELL, Imojean	Assemblies of God
LUTTRELL, Vicky	Assemblies of God
LYONS, Lonnie	Assemblies of God
MC CLURE, Mark	Assemblies of God
MC DANIEL, David	Assemblies of God
MC GARRIGLE, Agnes	Independent Pentecostal
MC GILL, Donald	Baptist
MC KELVEY, Annette	Assemblies of God
MC KENNA, Daniel	Assemblies of God
MC KENNA, Dennis	Assemblies of God
MC KINLEY, Robin	Assemblies of God
MC RAE, La Donna	Assemblies of God
MACARSKI, Betty Lou	Assemblies of God
MACE, Mary	Assemblies of God
MALATINO, Linda	Assemblies of God
MALONEY, Joseph	Assemblies of God
MANNING, Judy	Assemblies of God

MARSHALL, William	Baptist
MARTARANO, Annette	Christian Church of North America
MARTINO, Cynthia	Assemblies of God
MARTINO, David	Christian Church of North America
MASON, Robert	Assemblies of God
MATOLYAK, Donald	Assemblies of God
MEEKS, Sharen	Assemblies of God
MEIDAHL, Stephen	Assemblies of God
MILEY, James	Inter-denominational
MILLER, Calvin and Valorie	Assemblies of God
MILLER, Edward	Assemblies of God
MILLER, Eunice	Mennonite
MILLER, Lynnette	Assemblies of God
MILNE, Robert	Non-denominational
MINARD, Randy	Assemblies of God
MINCKLER, Ralph	Assemblies of God
MITCHELL, Linwood	Assemblies of God
MITCHELL, Theodore	Assemblies of God
MODORY, Stephen	Assemblies of God
MOLAND, Melvin	Assemblies of God
MOLAND, Nancy	Assemblies of God
MOLTER, Paul	Assemblies of God
MOODY, Jodie-Ann	Assemblies of God
MOODY, Kevin	Assemblies of God
MOORE, Donald	Christian Church of North America
MOORE, Larry	Assemblies of God
MOORE, Pamela	Christian Church of North America
MOREY, Cheryl	Independent
MOREY, Fred	Assemblies of God
MORGAN, Michael	Presbyterian
MORRIS, James	Assemblies of God
MORRISON, Christopher	Independent Pentecostal
MORTENSEN, Robert	Assemblies of God
MULDOON, Kevin	Assemblies of God

MUNN, Rebecca	United Methodist
MUNSIE, Angela	Assemblies of God
MURRAY, Patricia	Assemblies of God
MUSHERO, Dorothy	Assemblies of God
MYER, Ellen	Assemblies of God
NAFZINGER, Sylvia	Mennonite
NASH, Sara	Baptist
NASON, Daniel	Assemblies of God
NEARHOOF, Cindy	Assemblies of God
NELSON, Wayne	Assemblies of God
NESKIE, Michelle	
NICOLAIDES, Paul	Independent Pentecostal
NIDORF, David	Christian Church of North America
NOBLE, Kenneth	Presbyterian
NOBLE, James	Assemblies of God
NOLTE, Mark	Assemblies of God
OLDSEY, Joseph	Christian Church of North America
OLENA, Douglas	Assemblies of God
OLIPHANT, David	Assemblies of God
OLIPHANT, Orson	Pentecostal
ONDISH, Susan	Assemblies of God
O'ROURKE, Kathleen	Assemblies of God
ORTIZ, Rafael	Assemblies of God
PALLESCHI, Michael	Assemblies of God
PALMER, Roger	Pentecostal Church of Christ
PAPIT, Sharon	Assemblies of God
PARRIS, Harry	Baptist
PARSONS, Lee	Assemblies of God
PENNELL, Larry	Assemblies of God
PETERS, Robert	United Presbyterian
PETERSON, Brian	Full Gospel
PIERMANI, Ernest	
PIGNALOSO, Theresa	Assemblies of God
PILLING, John	Assemblies of God
PIOTROWSKI, Arthur	Assemblies of God
PISTELLO, David	Assemblies of God

PLOWDEN, Donald	Assemblies of God
PLUMMER, Cheryl	Assemblies of God
PORTALEOS, Debra	Assemblies of God
POWELL, Paul	Catholic
PRATT, Stephanie	Assemblies of God
PRESTON, Charles	Assemblies of God
PRESSLEY, Harry	Assemblies of God
PRICE, Dorothy	Assemblies of God
PRIVETTE, Kathy	Assemblies of God
PROSSER, Robert	Independent
RAIKER, Frank	Assemblies of God
RAMIREZ, Elsie	Assemblies of God
RASKI, Ilona	
RAY, J. Enos	Assemblies of God
REBON, Daniel	Assemblies of God
REBUCK, Denise	Assemblies of God
RECENE, James	Assemblies of God
REED, Lorraine	Assemblies of God
REID, Ronald	Baptist
RENESLACIS, Earlene	Assemblies of God
RHINESMITH, Dawn	Assemblies of God
RHOADES, William	Assemblies of God
RICE, John	Assemblies of God
RICHARDSON, Harold	Assemblies of God
RIGDEN, Andre	Assemblies of God
RITCHEY, John	Assemblies of God
RIVERA, Margarita	Assemblies of God
ROBARTS, Sharon	Assemblies of God
ROBERTS, Julie	Assemblies of God
ROSS, Denise	United Methodist
ROYS, Leo	Assemblies of God
RUTLEDGE, Donald	Assemblies of God
SADOSKY, Charles	Non-denominational
SAMES, Dennis	Independent
SANTON, Dean	Assemblies of God
SAWYER, Remi	Assemblies of God
SBANO, Nicholas	Assemblies of God
SCANLON, James	Assemblies of God

SCHAEFER, Daniel	Assemblies of God
SCHASER, Jack	Assemblies of God
SCHENKEL, Bruce	Assemblies of God
SCHOOLEY, Kathleen	Assemblies of God
SCHOPPE, Fred	Assemblies of God
SCHMITZ, Karl	Assemblies of God
SCHROEDER, Nancy	Assemblies of God
SCHURTZ, Wendell	United Methodist
SCOLFORO, David	Assemblies of God
SCOTT, Randolph	United Methodist
SEEDS, Gary	Presbyterian
SEIDEL, Giovanna	Assemblies of God
SEMPLE, Charles	Independent
SEPULVEDA, Mary Ann	Christian Missionary Alliance
SHAFFER, Edward	Assemblies of God
SHER, Jeffrey	Assemblies of God
SHOEMAKER, Richard	Assemblies of God
SIMMERS, Ruth	Assemblies of God
SIMS, Glen	Assemblies of God
SISTI, Edward	Assemblies of God
SIVAR, Irene	Lutheran
SLICK, Joseph	Independent
SLIDER, Christine	Assemblies of God
SMALL, William	Assemblies of God
SMITH, Deborah	Assemblies of God
SMITH, Dennis	Assemblies of God
SMITH, Jeffrey	Assemblies of God
SMITH, Lucy	Assemblies of God
SMITH, William	Assemblies of God
SNOOK, Joseph	Assemblies of God
SNOW, Kathy	Assemblies of God
SPEARS, Hobart	Assemblies of God
SPENCE, Cindy	Presbyterian
SPRUILL, Ruth	Assemblies of God
SQUIBB, Ronald	Assemblies of God
STELIGA, Nancy	Independent
STEVER, Deborah	Assemblies of God
STEWART, Karolyn	Assemblies of God

STONEROCK, David	Assemblies of God
STONEROCK, Faith	Assemblies of God
SURLA, Ricardo	Assemblies of God
SWANK, Glenn	Assemblies of God
SWANSON, Melinda	Assemblies of God
SWEETMAN, Robin	Assemblies of God
SZCZESNIAK, Frederick	Pentecostal
TACKETT, William	Assemblies of God
TAYLOR, Linda	
TEDESCHI, Mark	Christian Church of North America
TERILLI, James	Assemblies of God
TERILLI, Patricia	Assemblies of God
TERRAGNOLI, Kathleen	Christian Church of North America
TITONE, Joseph	Assemblies of God
TOPAR, Donna	Assemblies of God
TOPAR, Thomas	Presbyterian
TORRES, Marian	Assemblies of God
TORRES, Paul	Assemblies of God
TOURVILLE, Debbie	Assemblies of God
TRENT, Virginia	Assemblies of God
TUCKER, BEVERLY	Assemblies of God
TUCKER, Sharon	Assemblies of God
TURNER, Rosemary	Assemblies of God
TWIGG, Rebecca	Assemblies of God
TWOMBLY, Jack	none
TYLER, Della	Assemblies of God
TYLER, Joan	Methodist
VAN ARNAM, Rose	Assemblies of God
VAN DINE, Harold	Assemblies of God
VELASTEQUI, Maria	Assemblies of God
VELAZQUEZ, Raphael	Assemblies of God
VERRILL, Judith	
VLASAK, Michael	Assemblies of God
VOLPE, Ralph	Assemblies of God
VOTTO, Ronald	Assemblies of God
WAGNER, Bonita	Assemblies of God

WALKER, Burl	Assemblies of God
WALLIN, Gary	Pentecostal
WATSON, Larry	Assemblies of God
WEBSTER, Laura	Assemblies of God
WEIKEL, Jeffrey	Evangelical Congregational
WELCH, Edwin	Assemblies of God
WERGIN, Russell	Assemblies of God
WEST, Suzanne	Assemblies of God
WETHERALD, John	Assemblies of God
WILAND, Barbara	Assemblies of God
WILLIAMS, Deborah	Assemblies of God
WILLIS, Barbara	Assemblies of God
WILLIS, Samuel	Assemblies of God
WILSON, Jeffrey	United Methodist
WILSON, John	Assemblies of God
WIMMER, Larry	Baptist
WINCHOBA, Suzanne	Assemblies of God
WINT, David	Independent
WINT, Mae	Independent
WOOD, Charlie	Independent Pentecostal
WOODBERRY, Tyrone	Baptist
WOODSON, Judy	United Methodist
WOLFE, John	Evangelical Congregational
WRIGHT, Betsy	Assemblies of God
WRIGHT, John	Assemblies of God
YEUNG, Chee Oi	Assemblies of God
YOMMER, Beverly	Assemblies of God
YORK, Gary	Assemblies of God
YOUNGBLUD, Josephine	Catholic
ZABRISKIE, Sharon	Assemblies of God
ZACHMANN, Patricia	Assemblies of God
ZGRABLICH, Daniel	Christian Church of North America
ZOESCH, Gregory	Assemblies of God

Valley Forge Christian College 1977-1979

A SCHOOL FOR TRAINING MINISTERS,
MISSIONARIES AND
CHRISTIAN EDUCATION WORKERS

P.O. Box 810
(Charlestown Rd.)
Phoenixville, PA 19460
(215) 935-0450

REV. OBIE L. HARRUP, SR
President

Valley Forge Christian College

FROM OUR PRESIDENT

God and our country has given us one of the finest college facilities in the United States, consisting of 77 acres and 70 brick buildings. Located adjacent to the Valley Forge National Park area, it is only a few miles from the place where General George Washington spent the winter of 1777-1778 suffering and praying for his troops.

We appreciate your interest in Valley Forge Christian College. This catalog will answer questions about entrance requirements, finances, course offerings and student activities.

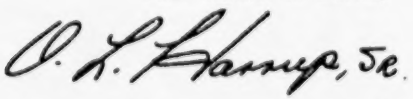
As a student at Valley Forge Christian College you will sit under Spirit filled teachers who are qualified academically and spiritually to teach you God's Word.

The Holy Spirit is present in both classroom and chapel to give guidance and help towards a God-centered life. From such a student body as ours, ministers, missionaries, and Christian workers go to the ends of the earth to fulfill the Great Commission.

Today, men and women who have already prepared for and labored in various secular fields, are feeling God's call to the ministry.

We invite all of you to come, along with the recent high school graduates who are coming, and be a part of our VFCC family.

Your brother in Christ,



O.L. Harrup, Sr.
President

General Information

LOCATION

Valley Forge Christian College is located just southwest of Phoenixville on the Charlestown Road and astraddle a common boundary between Schuylkill and Charlestown Townships.

Historically, the location could be traced to William Penn and his immediate descendents. It undoubtedly had heard the grumblings of the British and Colonial soldiers during the American Revolution.

Phoenixville is located approximately 25 miles northwest of Philadelphia on Route 23. Routes 29 and 113 also pass through the city of Phoenixville.

If coming to the campus from the Pennsylvania Turnpike, you should exit at the King of Prussia Exit #24 and take Route 23 to Phoenixville. Go to Bridge Street (which becomes Charlestown Road) and turn left (South) about one mile. The college is on the right just after you pass Northern Chester County Vo-Tech school on the left. (See map in this catalog.)

HISTORY

Valley Forge Christian College is a theological school, chartered under the name of Eastern Bible Institute on January 6, 1939, for the training of pastors, evangelists, missionaries, Christian education and lay workers. It is now operated under the supervision of a Board of Regents representing the six districts of the Assemblies of God in the northeast part of the United States plus the Italian branch of the Assemblies of God and is approved by the Department of Education of the General Council

of the Assemblies of God as their regional school for the Northeast.

Early in the 1930's there was a growing consciousness among the people of the Assemblies of God in the East of the need for a school of their own for the training of ministers, missionaries and Christian workers. The first step toward meeting this need was taken in 1932 when a group of workers under the leadership of the Reverend and Mrs. J. Roswell Flower, began a summer Bible school at the camp grounds of Maranatha Park, Green Lane, Pennsylvania. The success of this summer school program further emphasized the necessity for a permanent Assemblies of God Bible School on the eastern seaboard.

Such a school was established in the Fall of 1938 when a group of thirty-five students assembled at the Maranatha camp grounds. When the student enrollment more than doubled additional facilities were constructed.

Through the period of its permanent existence as Eastern Bible Institute the school was ably led by three different presidents. The first two each served for a period of eleven years: the Reverend Allan A. Swift from 1938 to 1949; and the Reverend Milton T. Wells from 1949 to 1960. The Reverend Robert L. Moore served from 1960 to 1963.

In August, 1962, the Institute became the regional school, and its name was changed to Northeast Bible Institute. The Reverend Paul J. Emery, Sr., became president in June 1963 and served until June, 1972. The Reverend Obie L. Harrup, Sr., assumed his duties as president in August 1972, and his vision inspired faculty and students alike. In May 1975, under his leadership, the school received provisional recognition from the Commonwealth of Pennsylvania to grant the Bachelor of Science in Bible degree and the name of the school was changed to Northeast Bible College.

Dr. Harrup was also successful in negotiations to obtain from the Federal Government 77 acres and 70 buildings of the former Valley Forge General Hospital in Phoenixville, PA, as a new campus for the college. On August 5, 1976, President Harrup signed the deed for this property.

On January 1, 1977, the Commonwealth of Pennsylvania approved the change of name to Valley Forge Christian College at the request of the Board of Regents.

OBJECTIVES

The purpose of Valley Forge Christian College is to offer systematic training on the collegiate level to men and women for Christian service as either ministers or laymen. Therefore, educational opportunities are provided for those who would enter into full-time study and those who wish to take only specialized courses.

Upon successful completion of study, each student will be able to:

1. enjoy a sensitivity to the ministry of the Holy Spirit so that both the fruits and the gifts of the Spirit may be manifested through them in an outreach to the lost and in the edification of believers;

2. reflect the fruits of an adequate study of Biblical, professional, and general education which will aid the student to think logically, critically, and meaningfully and which will broaden his knowledge of God, man, society, and the physical world;

3. participate, effectively and skillfully, in all areas of practical Christian work;

4. present a character committed to sound Christian ethics and cultivate a well-adjusted personality; and

5. appreciate the refinements, social graces and civil responsibilities within our culture.

DOCTRINAL STATEMENT

The following summarizes some of the fundamental truths believed and taught at the Valley Forge Christian College:

1. The Bible is the Word of God, the infallible rule of faith and practice for all men. It is superior to conscience and reason, although not contrary to reason.
2. There are three persons in the Godhead—Father, Son, and Holy Spirit. These are one as to nature. They are each co-eternally self-existent, yet none can exist without the others.
3. The Son of God, who was in the beginning God with God, for the sake of man became man and was called Emmanuel—that is, God with man.
4. "By one man sin entered into the world, and death by sin; and so death passed upon all men, for that all have sinned."
5. Jesus Christ, the Lord of glory, being crucified, tasted death for all men; He arose from the dead, and ascended to the Father. Whosoever repents and believes on Him may have eternal life.
6. Man is justified by faith in Jesus Christ, apart from works.
7. The Son of God baptizes believers with the Holy Spirit for life and service.
8. Holiness of life is the result of the believer's identification with Christ in His death, resurrection, and present throne-life in glory. It is attained by faith in the Lord Jesus Christ as the Sanctifier through the power of the Holy Spirit.
9. Jesus Christ is the physician of His People. By His atonement He purchased deliverance from every sickness, and by His Spirit effects healing as men believe.
10. The imminent return of Christ out of

heaven to this earth is the blessed and living hope of all believers.

11. The subjugation to Christ of all rule and all authority is the ultimate purpose of the revelation of Jesus Christ.
12. "They which are written in the Lamb's Book of Life" shall enter into the holy city, New Jerusalem. But "whosoever was not found written in the Book of Life was cast into the lake of fire."

ACCREDITATION

Valley Forge Christian College is an accredited member of the American Association of Bible Colleges. This is the national accrediting association recognized by the U.S. Office of Education for the accrediting of Bible Colleges. AABC is also a member of the Council on Post-Secondary Accreditation (COPA).

APPROVAL

Valley Forge Christian College is provisionally approved by the Pennsylvania Department of Education as a degree granting college.

Valley Forge Christian College is listed in the Education Directory, page 366, Higher Education, published by the U.S. Office of Education.

Valley Forge Christian College is endorsed by the Department of Education of the Assemblies of God. Its graduates have been approved for acceptance in the Graduate School of Theology of the Assemblies of God, Springfield, Missouri.

Seminaries and Universities in the State of Pennsylvania and other states accept our graduates into their graduate programs.

Since 1939 Valley Forge Christian College (formerly Northeast Bible College) has operated under a charter granted by the Commonwealth of Pennsylvania.

This college is authorized under Federal Law to enroll exchange-visitor and non-immigrant alien students.

The college is approved by the Department of Education of the Commonwealth of Pennsylvania for Veterans Education under the provisions of Title 38, United States Code, Section R 1775.

Valley Forge Christian College comes within the definition of a "divinity" or "theological" school as outlined in the Selective Service Regulations.

MEMBERSHIP

Valley Forge Christian College is an active member school of the Evangelical Teacher Training Association and is authorized to grant the Teachers Diploma of the Association to qualifying graduates. ETTA is a nationally recognized inter-denominational agency for the promotion of higher standards of Christian teachers and church educators.

COLLEGE FOR A DAY

The doors are open for you to join us in a day of activity on the VFCC campus. Worship with us, sit in on a .ew classes, talk with students themselves. These are the best ways to get to know a college. We'll supply the meals and even the overnight accommodations when necessary. So come, bring a friend or bring a group. You pick the day! This is an excellent opportunity for high school juniors and seniors to become acquainted with VFCC. Please make overnight arrangements well in advance, specifying the number of boys and girls in your group as well as the number of accompanying adults. Call: (215) 935-0450 (extension 24) or use the handy mailer below.

I would like to take advantage of COLLEGE FOR A DAY.

Date arriving _____
Estimated time a.m./p.m

No. in party _____
girls boys adults

I will need overnight accommodations for no.____above.

Name _____

Address _____

City _____

State _____ Zip Code _____

Phone _____ Area Code _____

Student Life

Chapel Service
The highlight of the daily program at VFCC is the Chapel service. The spiritual tone of the college is maintained as students meet God in worship and enjoy the anointed ministry of the Word by the faculty, visiting ministers, and senior class members. As the Holy Spirit moves upon these services, ample time is made in the schedule for waiting on the Lord. Attendance is required.

Private Devotion
The individual student is encouraged to take full advantage of "quiet-hour" period in the daily schedule to enjoy private devotions. Each is expected to develop a self disciplined devotional life.

Christian Service
The Christian Service Department requires each student to participate in Christian activities each term. They gain experience in such areas as youth centers, canvassing, conducting story hours and street meetings, ministering in old folks' homes and surrounding churches. The scope of this outreach is being broadened constantly with the result that each year many souls receive Christ as Savior through the preaching, teaching, witnessing, and musical ministry of students.

Missionary Society
The entire student body is organized into "The Student Missionary Society." This organization plays a vital role in maintaining a strong missionary emphasis in the school. Each day at special missionary prayers student curators present the need of worldwide Assemblies of God missions. Each Friday the Society con-

ducts a missionary service in which different speakers challenge the students with the urgency of world evangelism. It is in such services that the calling of God to the harvest becomes definite to many students.

A missionary convention is held each year early in the Spring Term. Missionaries who are on furlough give first hand information of their respective fields of labor. The convention is always a highlight of the school year.

Social Life

It seems desirable and fitting that young men and women in preparation for specialized service for God should enjoy wholesome social relationships. The college organizes and supervises regular social activities for students. True and lasting friendships often result from these social activities, though the administration discourages thoughtless engagements and immature marriages. Students are advised to counsel with the president prior to engagement and receive his permission.

Student Life Activities

A number of "get acquainted" activities such as the annual Camp Fire service and the New Student Reception highlight the opening of school each year. A Student Life Committee plans for picnics, hikes, social affairs, and sports events throughout the year. On most weekends there is some kind of activity planned. Some of these take place on campus and some in nearby cities. Special Campus Days, pre-holiday socials for Thanksgiving and Easter are considered major events.

Athletic Program

Valley Forge Christian College is a member of the North Atlantic Christian Conference and the National Christian College Athletic Association. VFCC participates in Varsity Soccer, Cross Country, Basketball and Softball with member colleges.

Team competition on the intramural level in softball and basketball provides spirited contests which are enjoyed by the spectators as well as players. Students, unless physically unable, take part in a weekly program of sports and exercise in physical education classes.

Housing
For the ladies, there are almost 200 single rooms with semi-private baths available. For the men, the rooms vary with single or more occupancy. The price varies with the number of students per room.

For married students, there are furnished apartments available: Efficiency, 1 bedroom and a few two bedroom apartments. The price varies with the size of the apartment.

Students Handbook
Self-discipline in the love of Christ is considered an important goal for each student to attain during his time at VFCC. A happy and orderly Christian society cannot function without some rules and regulations. Therefore, a Student Handbook is furnished to each entrant to acquaint him with those things which are expected of him and to help him to make the adjustments to the life of a student in a Christian college. A learned discipline in Christ also enables a happy adjustment to the world about him. However, a high premium is placed on personal integrity and that Christian love, which makes obedience enjoyable.

Departure from the school's standards will result in Christian counseling and when necessary, appropriate discipline will be administered in the hope of helping the student develop a mature Christian character.

Campus Regulations
Any thing that is used in such a way as to cause undue disturbance and annoyance to others, may be prohibited in dormitory rooms by proper administration authorities. This includes radios, television, record and tape players and etc.

Dogs or other pets may not be kept on the campus.

Automobiles may be brought to campus provided. (1) they are registered at the Office of the Dean of Students (see automobile fee, page 22), (2) evidence is submitted that the owner has adequate liability insurance and valid license plates, and (3) they are operated in compliance with school regulations and with a valid driver's permit. Repeated violations may result in being required to file the keys with the Dean of Students. Under no circumstances can the school be held liable for damages to automobiles either on or off campus, but all owners and drivers will be held liable for damages by their automobiles.

No firearms are permitted on campus.

Campus Book Store and Student Union
The Student Union is a popular campus rendezvous where light snacks and refreshments are available along with Christian fellowship. These facilities are maintained to help meet the needs of the students. Their convenience and economy in general effect a saving to those who patronize them. At the bookstore one may purchase textbooks, notepaper and other classroom supplies, etc.

Campus Post Office
Upon arrival at the college, each student is assigned a mail box. All incoming mail, will reach the student with the greatest amount of privacy and safety.

Library
A rapidly growing library especially adapted to a Bible college curriculum makes available over 25,000 volumes. The library is located in buildings #27 and #28. In addition to the book collection, about 138 periodicals are currently received with the various periodical indices to make them more useful.

Student Council
The Student Council offers student representatives the privilege and responsibility of an active interest in student-school relationships. It serves as a vital tie between the faculty and student body, interprets student viewpoints, and submits to the school administration suggestions for the welfare and improvement of the college. Through its subsidiary, the Student Judiciary Council, it shares in the counseling of students. When necessary, it may administer discipline, as provided for in "The Student Judiciary Council Rules of Procedure." The Student Council, itself, is composed or representatives of each class and each dorm. Its president is elected by the whole student body.

Class Organizations
Each class in the college is organized with an elected president, vice-president, and secretary. Monthly class meetings provide opportunity for the class to pray together, to conduct business, and to plan class projects.

Alumni Association
The Alumni Association was formed in 1941 to maintain fellowship among former students and graduates, and to promote the general welfare and development of the school. The merger of New England Bible Institute with Eastern in 1957 resulted in the formation of the General Alumni Association, which included students of New England, and Metropolitan Bible Institutes, and Beulah Heights Bible Training School. Later Pine Crest Bible Institute merged with Eastern to further enlarge the group. Today, the alumni family number more than 3200. The Annual Homecoming in the Fall and *The Voice*, a quarterly publication, serve to keep alive the ties between VFCC and her former students.

Clothing
Women students are expected to wear modest clothing, reflecting Christian character. Special

care must be given when participating in a chapel service or on Christian Service Assignments. Culottes or similar attire and sneakers are required for gym classes.

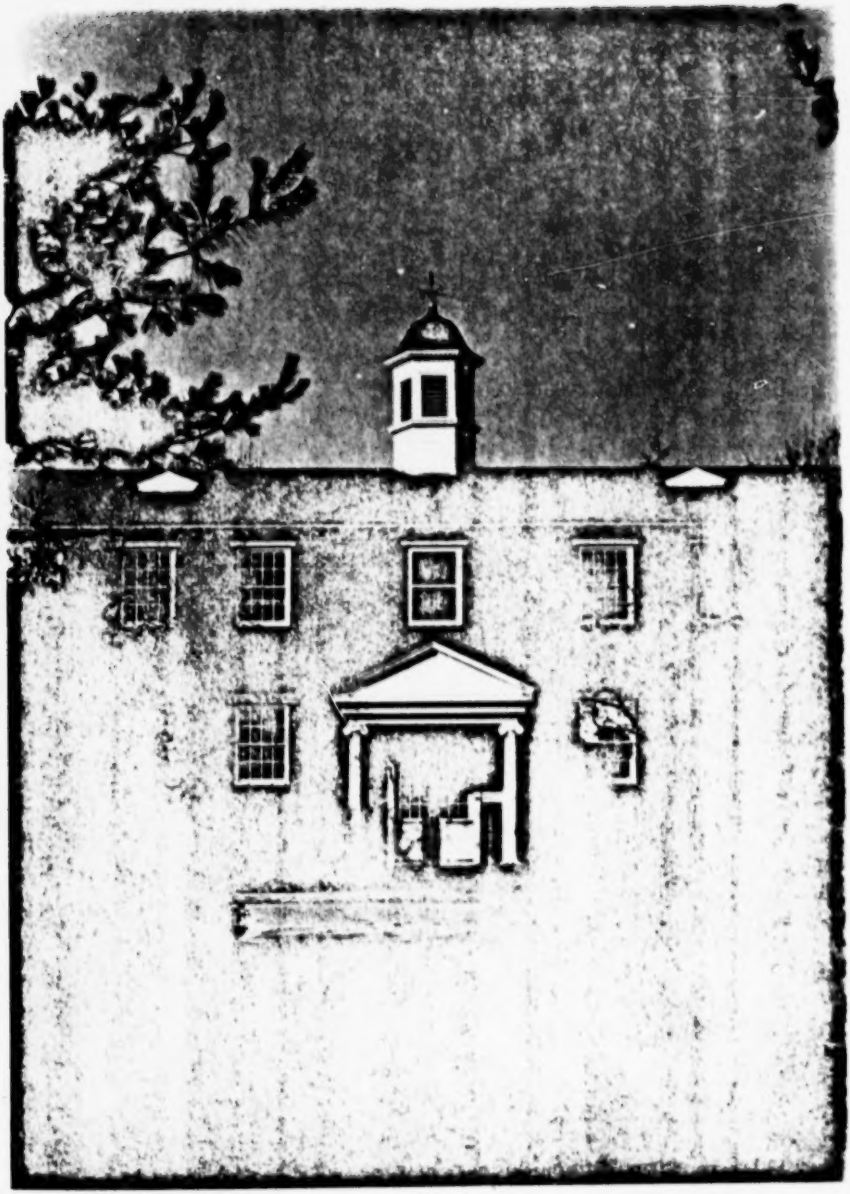
Men students are required to wear neat clothing. Dress suits as well as sport shirts for casual wear are necessities. Neckties, turtlenecks or leisure suits are required for chapel and classes. Gym shoes are required for Physical Education classes and games. (See Student Handbook for further instructions and the discipline that disobedience requires.)

Student Equipment
Dormitory students will have need for the following articles: a mattress pad for a single-bed, three single-bed sheets, one single-bed spread, blankets, pillow, pillow cases, towels, wash cloths, washable laundry bag, small rugs, soft-soled house slippers, a pair of panel style curtains (to cover a 48w x 68l window), dust mop or broom waste basket.

Name tapes to sew on laundry articles may be purchased at most local department stores.

Laundry
The school maintains coin operated washers and dryers on campus and provides facilities for hand laundering.

Employment
Many factories, stores, and offices within a fifteen mile radius of the college will offer part-time employment opportunities for students who find it necessary to work while completing their education. The college provides an employment referral service to assist students in finding part-time employment. Students are given a list of prospective employers and may choose the ones they wish to contact. It is recommended that students limit their off-campus work to a 20-hour per week maximum, though married students may need more hours.



Financial Information

The training facilities of Valley Forge Christian College are available to all students and prospective students who meet entrance requirements. Every effort is made to furnish this training as economically as possible and students may be assured that the administration is maintaining a careful check to offer maximum in education for a minimum of cost.

In return the administration requests the cooperation of each student in avoiding wastage of heat, electricity, water, food, and other expense items. Students are also asked to make prompt payments of their financial arrangements.

Valley Forge Christian College depends to a large extent upon student fees to bear the cost of school operating expenses each year. Outside funds are solicited to pay the difference in operating expenses and the cost for building permanent facilities. Therefore students are encouraged to regard their education as a valuable investment worthy of hard work and sacrifice. Each student should plan his own financial program carefully, seeking help from his family, church, loan funds, scholarships, his own employment and savings to assume his proportionate financial responsibility for his education. Even though he pays all of the required tuition, fees and room and board charges, every VFCC student receives a substantial subsidy through financial contributions and gifts on the part of many people and churches concerned that the students' God-given capacities and ministries be fully developed and utilized. To this extent every student carries with him a collateral investment by others in his education.

FINANCIAL POLICY

Recognizing the absolute necessity for prompt payment of all school fees, not only as a good business principle, but also for the sake of the character thus developed, the Department of Education of the Assemblies of God has established the following recommended policy on finance for all Assemblies of God schools.

In order to improve our present educational institutions and guarantee their future, each student is expected to reimburse the college for the full amount of his obligation on or before the close of each semester. No final examinations may be taken until a satisfactory arrangement has been made with the Business Office. No diplomas, degrees or transfer of credit shall be expected or received until satisfactory payment is made for all school obligations. Accounts of married students are combined. In such cases, the joint obligation must be paid before diplomas, degrees, certificates, and transcripts of either will be released.

All costs are subject to change without notice. A deposit of $25.00 must accompany your application.

Financial arrangements must be made on financial registration day, prior to attending classes.

Financial Information 20

FINANCIAL PAYMENT PLANS

PAYMENT PLAN #1—CASH: Pay the account in full at the beginning of the semester, thus receiving a 5% discount on tuition.

PAYMENT PLAN #2—TIME: Dormitory students will pay $400.00 at the time of registration and the balance in three equal monthly payments, due the 15th of each month during said term.

Non-dormitory students will pay $200.00 at the time of registration and the balance in three equal monthly payments, due the 15th of each month during said term (plus on campus apartment rental).

1. A ½% per month interest charge will be made on the unpaid balance.
2. Statements are presented to students on the 10th of each month.
3. Students who are unable to pay the entire school bill at the beginning of the term are urged to secure loan assistance.

PAYMENT PLAN #3—FINANCIAL AID: Loans and Grants (as available)

1. State Higher Education Assistance: Apply at your local bank or your state capital "Higher Educational Authority".
2. United Student Aid Funds: Apply at VFCC.
3. Insured Tuition Payment Plan: Apply at VFCC.
4. National Direct Student Loan (NDSL); VFCC is a participating institution in the National Direct Student Loan Program. In determining eligibility of a student for a loan, need must be definitely established.
   The repayment period and the interest do not begin until nine months after the student completes his studies. The loan bears interest at the rate of 3% per year and a minimum monthly payment of $30.00 is required. Apply at VFCC.
5. Educational Opportunity Grant Program (EOG): This is part of the Economic Opportunity Act and is available

to certain students who are in need of financial assistance and could not attend college without aid. Need must be definitely established. Apply at VFCC.

6. College Work Study Program (CWS): CWS may assist you by providing a job opportunity at the college itself or with a public or private nonprofit agency—such as a school, a social agency, or a hospital—working in cooperation with the school.
7. U.S. Veteran Loan: VFCC is a participating institution for G.I.'s using their Veteran Benefits for education.
8. Lucille Garrison Student Loan Fund: A small loan fund was set up in memory of Lucille Garrison by her mother to assist needy students. Small loans are available at 4% interest to students who would otherwise not be able to finish a school year. Apply at VFCC.
9. General Council Revolving Loan Fund: From profits of the Gospel Publishing House, by action of the Executive Presbytery of the Assemblies of God, a small fund has been made available to third and fourth year students who show special aptitude for a full time ministry in the Assemblies of God. Apply at VFCC.

BASIC COST PER TERM
FALL/SPRING
TERM
(Each)

	DORM STUDENT	NON-DORM STUDENT
* TUITION (12-16 Credit Hours)	$ 412.00	$ 412.00
** REQUIRED FEES	70.00	70.00
ROOM (Private)	192.00	
BOARD	312.00	
APARTMENT (On Campus)		500.00
BOOKS (Approximately)	55.00	55.00
TOTAL	$1041.00	$1037.00

MAY
TERM
(3 Credit Hours)

* TUITION	$ 85.50	$ 85.50
** REQUIRED FEES	17.50	17.50
ROOM (Private)	48.00	
BOARD	78.00	
APARTMENT (On Campus)		125.00
BOOKS (Approximately)	20.00	20.00
TOTAL	$249.00	$248.00

* $28.50 per credit hour below 12 hours, $27.50 above 16 credit hours
** Required Fees: Registration (Payable with Application) $25.00; Library $9.00; Post Office $4.00; Class Notes $5.00; Activities $15.00; Comprehensive $12.00; TOTAL $70.00
(6 or less credit hours $25.00; 6½-11½ credit hours $50.00; Auditing Students $25.00)
*** Required Fees for part-time students are as follows: 6 or less credit hours $25.00 6½-11½ credit hours $50.00 Auditing Students $25.00

ADDITIONAL FEES (when applicable)

Late Registration Fee	$25.00	
Registration for May when not registered for Spring Term	6.00	
Health & Accident Insurance (Approximately)	40.00	
Automobile Parking Space Spring/Fall	5.00	May 2.00
Orientation Fee (First term dorm students)	12.00	
Graduation Fee	21.50	
ETTA Diploma	4.00	
Room Security Deposit (Refundable)	10.00	
Key Deposit (Refundable)	5.00	

NOTE: Any damage or defacement of facilities will be charged directly to the one responsible.

ROOM RATES:

Private with semi-private bath	$12.00
Private with central bath	11.00
Double with central bath	10.00
Triple with central bath	9.00
Four with central bath	8.00

APARTMENTS (Married Students) Brick apartments with living room, kitchenette, bath, and one or two bedrooms, with basic furniture, utilities included

One bedroom apartment	$125.00
One bedroom apartment (larger)	135.00
Two bedroom apartment	150.00

(Larger housing is available off campus for couples with more than two children.)

BOARD: $19.50 per week All dorm students must eat in the college cafeteria. Others may pay for each meal to the cafeteria cashier.

GUIDED INDIVIDUAL STUDIES (GIS): $30.00 per credit hour

MUSIC: Private lesson charges are based upon thirteen thirty-minute lessons and thirty-nine practice periods. These lessons are offered in the Fall and Spring Terms. No refund can be made for lessons missed for any reason other than excused illness. Payment shall be made in advance.

	Lesson Fees	Practice Period Fees
Organ	$41.25	$10.00
Piano	37.50	5.00
Other instruments	37.50	
Voice (Private)	37.50	5.00

Special Tests

Unit tests taken at any time other than scheduled, when permitted $5.00
Final exams taken at any time other than scheduled, when permitted by the Academic Dean 5.00
Special tests 5.00
Changing incompletes to completes 5.00

Financial Information 24

Discount Policy

A 10% discount on tuition is granted to the wife and children of a pastor or a full-time evangelist.
A 25% discount on tuition is granted to ordained ministers.
a 50% discount on tuition is granted to Assemblies of God foreign missionaries and/or their children.
A 50% discount on tuition is granted to a spouse when his or her spouse is a full-time student at VFCC.
A 5% discount on tuition is granted if payment is made in full for tuition, room, board, and fees on or before registration day.
There is no discount granted on music fees, GIS and Extension Course charges.

ADJUSTMENT OF ACCOUNTS

CHANGES IN SCHEDULE: Any schedule changes made will be charged at the rate of $1.00 for each change.

TUITION: Upon withdrawal from college with the proper approval, the following credit will be granted on tuition: 100% up to the beginning of classes, 80% during the 1st week, 60% during the 2nd week, 40% during the 3rd week, 20% during the 4th week. No refund shall be made after the 4th week of classes.

There is no refund on GIS courses.

Refunds of tuition for classes dropped, after proper approval, will be as follows: 100% during the first week of seven days; 80% for the second week; 60% for the third week; and 40% for the fourth week. There shall be no refunds after the fourth week.

BOARD: Adjustment on board is pro-rated as of the week of withdrawal.

ROOM RENT: Refund will be made on the same basis as refund for tuition.

FEES: Registration Fee, Post Office Service Fee, Activities Fee, and Library Fee—no refund; Comprehensive Fee, Auto-

mobile Fee, Laundry Fee, Lab Fee, Class Notes Fee, and Music Fee—refund on same basis as tuition.

Health and Accident Insurance
Health and accident insurance is compulsory for each campus student. Specific details of the policy are presented to the student at the time of registration.

Books and Supplies
Bibles, religious books, textbooks, notebooks, dictionaries, and supplies may be purchased at the campus bookstore. Discounts are available.

SCHOLARSHIPS
The College is eager to find ways of helping as many worthy students as possible and welcomes the establishment of scholarship donations from all who would like to invest once or repeatedly in the training of future workers for God. Unless otherwise indicated, the Scholarship Committee administers these scholarships endeavoring to assist and encourage as many as possible of the most worthy students.

Alumni Scholarships
One hundred dollar awards are given to each of two fourth-year, two third-year, and two second-year students, half of the Fall Term and half for the Spring Term. Selections are made by the Alumni Executive Committee from recommendations made by the Scholarship Committee.

Tunmore Scholarship
In memory of Reverend Joseph Tunmore and Mr. and Mrs. Ernest Tunmore, a grant of $135.00 is given each Fall and Spring term to a student who meets specific requirements. This is made possible by a trust fund set up by Mrs. Howard O. Hawley.

District C.A. Scholarships
Each year VFCC makes available to the outstanding C.A. of each District within the VFCC Region a scholarship of $50.00 providing the C.A. Department of that District matches it with an equal amount.

C.A. Bible Quiz and Teen Talent Search Scholarships
Each year VFCC offers the following scholarships to the team winners: $100.00 for district winners; $150.00 for regional win-

ners; and $300.00 for national winners. A certification from the District C.A. office will enable the scholarship committee to award the scholarship.

Missionary Scholarships
Children of missionaries under Assemblies of God appointment may receive seventy-five dollars ($75.00) for each month of the school year up to four years from a scholarship fund administered by the Foreign Missions Department of the Assemblies of God. Application for these allotments must be made directly to the Foreign Missions Department in Springfield, Missouri.

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Missionaries will also note the fifty percent discount on tuition offered by VFCC on page 24.

National C.A. Scholarship
Each year the National Department of Education in conjunction with the National C.A. Department conducts a contest to select recipients of the National C.A. Scholarships. The winners are given a scholarship of $300.00 to the Assemblies of God school of their choice which may be applied at VFCC.

Scholarships in the amount of $150.00 are made available by VFCC to runners-up in this contest.

W.M.C. Scholarships
Various Districts within the Region have set up W.M.C. Scholarships which are granted to worthy students according to the provisions made for each scholarship by the W.M.C. organizations. These are administered by the Scholarship Committee of the college.

High School Valedictorian
A scholarship in the amount of $200.00 ($100.00 for Fall term and $100.00 for Spring term) is made available to high school valedictorians.

High School Salutatorian
A scholarship in the amount of $100.00 ($50.00 for Fall term and $50.00 for Spring term) is made available to high school salutatorians.

Other Scholarships
Scholarships of varying amounts are made available to worthy students in attendance at VFCC.

Work Scholarships
Various on-campus work scholarships are available to a limited number of students. Application should be made as soon as the student has been accepted by VFCC. At least seventy-five percent of such earnings must be applied to the student's account until the account is clear.

Academic Information

LENGTH OF SCHOOL YEAR

Valley Forge Christian College operates on a 4 + 4 + 1 (nine months) school year plus one month of summer school. This allows a student freedom to graduate in three years or to pursue a more leisurely four-year program.

REQUIREMENTS FOR ADMISSION

Since Valley Forge Christian College is basically a school for training those who expect to enter some form of Christian service, the motivation of the prospective student is of prime importance. Those whose academic and personal qualifications indicate they will profit from the program offered are accepted. Admission to VFCC is granted to applicants meeting the school's admissions requirements without regard to race, color, national origin, or denomination.

Education. Graduation from an accredited high school is the basic educational requirement for admission. A transcript of high school work is required. Individuals having the equivalent of a high school education (GED) are admitted upon submission of an equivalency diploma and the report of the testing scores. Information on location of testing institutions is obtainable from the local high school.

A student applying with a low academic record may be admitted to determine whether he can qualify for college level education. If his grade average falls below D or 1.00 for the first term, he is put on academic restriction for the second term. But, he must meet the regular grade requirements in order to continue the succeeding term. (See Academic Restriction Page 33).

Personal Motivation. Students of all faiths may attend the college as day students provided they are of good moral character and are willing to abide by all the rules of the college. Resident students must have a born again experience and be of good moral character. Those who have not experienced the Baptism in the Holy Spirit will be encouraged to seek and receive this experience.

Transfer students are accepted from accredited colleges on the basis of transcripts, satisfactory conduct records and a clear financial record. Usually credit is granted for comparable courses in which grades of "C" and higher are earned but acceptance of credits on a transfer basis is always up to the institution to which transfer is sought. Transfer students must earn at least 30 credits at Valley Forge Christian College to qualify for graduation. Students from non-accredited schools may be granted transfer

credit consideration either on the basis of entrance tests or demonstrated proficiency in courses taken at Valley Forge Christian College.

Health. Before final acceptance for admission to Valley Forge Christian College, each applicant is required to have a medical examination. Forms for these are mailed to prospective students. This report includes a physician's examination, a TB test taken within one year of entrance and certification of necessary immunization.

Examinations. All entering students are required to take a placement examination in music and English. (Those needing remedial grammar will be required to take two extra hours without credit.) Also, aptitude and Bible content tests are given to guide counselors and teachers.

Application. All students and transfer students interested in attending Valley Forge Christian College must fill out an application form, which may be obtained from the Admissions Office. The fully completed form should be returned at the earliest possible date. At the same time, applicant should request his high school to send a transcript of his record; in addition the transfer student must request his college to send a transcript of his records. Send applications and transcripts to Admissions office. A nonrefundable registration fee of $25.00 must accompany the application.

Re Entry. Unless notified to the contrary, the Registrar's Office will assume that students enrolled for the Fall term, who are not completing requirements for graduation, will continue through the Spring term. Students enrolled in the Spring term, who are planning to return in the Fall, must confirm their plans by appropriately completing the application form which is made available for that purpose. The student will be notified of the action taken on his request to continue.

Students' Pledge. It is to be distinctly understood that all who enter Valley Forge Christian College as students must voluntarily assume the obligations and responsibilities involved in the rules and regulations of the College, and agree to abide by its policies. A student's entrance is considered his pledge to comply.

The administration reserves the right to suspend or dismiss any student at any time when, in the judgment of the administration, such action is advisable.

Attendance at VFCC is a privilege, and the privilege may be withdrawn in the case of a student who evidences substantial disagreement with the traditions and regulations of the school, or who is unwilling or unable to adjust to its environment. No credit will be granted for work done during the term in which the dismissal occurs.

Veterans. Out-of-state residents should request that their records be transferred to the Philadelphia offices. Veterans should be prepared to meet the usual financial requirements of all students at the time of registration.

Foreign students. VFCC is authorized to train students in the Exchange-Visitor status (J-1) and non-immigrant alien classification (F-1). Applicants must consult the nearest American consul regarding study in the United States.

Proficiency in written and spoken English is required. Such proficiency can be established by acceptable scores on the *Test of English as a Foreign Language*. Information regarding the procedure may be obtained from Educational Testing Service, Princeton, New Jersey 08540.

The foreign student must arrange for his own financial sponsor, and such sponsors must assume full responsibility for the student's expenses. Since the immigration service does not grant permission to work, the student should have enough money to meet his full financial obligations.

SCHOLASTIC REGULATIONS

Late Entry. All students are expected to be present and to complete registration within the time allotted for this purpose. A late registration fee of $25.00 is charged students who enroll after the specified time in the Fall and Spring terms and $10.00 in the May and June terms. No student will be permitted to enroll or to change enrollment after ten calendar days have elapsed following registration during the Fall and Spring terms and after two days in the May and June Terms.

Student Load. Fifteen hours weekly is the usual required load for each student during the Fall and Spring terms. Each May and June term consists of one subject taken two or three hours a day, five days a week.

Electives. Classes will not be formed in any elective subject unless a minimum of eight students enroll. If less than fifteen enroll, the class may or may not be taught at the Dean's discretion.

Schedule Changes and Withdrawals. Care should be exercised in the choice of courses so that changes will not be necessary after registration has been completed. Requests for a change of enrollment or to withdraw from class must be approved by the Registrar on the form provided. There is a charge of one dollar for each request for a change during the first ten calendar days of the Fall and Spring terms and two days of the May and June terms. No changes, other than withdrawals, may be made after that. A student who withdraws from class with the approval of the dean during the first five weeks of the Fall or or Spring terms or five class days of the May and June terms will receive a "W" on his record for that subject. During the next five weeks it will be recorded as "WP" or "WF". After the tenth week (tenth day of the May and June terms) withdrawals will receive an automatic "WF" (See the Schedule for Changes and Withdrawals at the end of each college year calendar.) All courses dropped irregularly are entered as "F" in the student's permanent record which will affect his grade average. Withdrawal from class or school is arranged at the office of the Academic Dean. No withdrawal from school is official until signed by each individual indicated on the application for honorable withdrawal.

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Absences. The policy on class absences is in the Student Handbook.

System of Grading. The grading system used in Valley Forge Christian College is as follows:

A—Outstanding Work (100-93)
B—Above average (92-85)
C—Average (84-77)
D—Below average (76-70)
F—Failure (69 + Below)
W—Withdrew
WP—Withdrew while passing
WF—Withdrew while failing
Inc—Incomplete

All subjects marked "Incomplete" must be made up within the first six weeks of the term following that in which they were originally taken, or they automatically become failures. See page 24 for charges.

Quality Points. These are awarded as follows "A" grades rate four quality points per term hour. "B" rates three points, "C" two points, "D" one, "W" and "WP" not counted. "WF" and

"F" no quality points "Inc." if not made up, will also be counted as an "F". Thus, if a student receives a "B" in a three hour subject he will have accumulated nine quality points.

Academic Restriction. First year students must maintain a minimum average of at least "D" or 1.00 quality points on the four point scale in order to return for a second year. All others must earn a "C" average with a minimum quality point average of 1.50 to continue in school. When a student's term average drops below the minimum for a term, he is put on academic restriction for the next term. If he still does not earn at least the minimum then he will not be permitted to return for the third term (except as a special student, under extenuating circumstances). When a third year student's cumulative average drops below 1.5, he shall be put on academic restriction. When a fourth year student's cumulative average drops below 2.0, he shall be put on academic restriction or be allowed to adjust to the three-year program. A student on academic restriction will of necessity have to limit his extra curricular activities. He may not be a member of the Evangelaire Concert Choir or of the School Sports teams, an officer of a class, or prayer band, on the staff of the school paper or yearbook, etc.

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Credit. A "credit" or "credit hour" is equal to the usual 18 week "semester hour."

Auditing. The fee for this privilege is one-half the regular tuition fee. Auditing students will not hand in papers, take tests, or be allowed to change to a credit bearing basis. Grades will not be given and attendance will not be checked. In place of a grade on the transcript, the word "Audit" will appear.

Classification of Students. The following classifications have been established:

Freshmen Students	Those matriculated students who have completed less than 30 credits.
Sophomore Students	Those with 30 and less than 60 credits.
Junior Students	Those with 60 credits and less than 90 credits in the four-year degree program or those who have 96 credits and plan to graduate from the three-year certificate program.

Senior Students:

Graduating	Those with 90 credits who plan to graduate from the four-year degree program at the end of the current school year.
Non-Graduating	Those with 90 credits in the four-year degree program who do not plan to graduate in the current school year.
Continuing Education Student	A former four-year certificate graduate who is working towards his four-year degree.
Full-time Students	Those who are carrying at least twelve credits. Only full-time students may live in the dormitory rooms and in the campus housing.
Part-time Students	Those who are carrying less than twelve credits.
Special Students	Those who do not intend to graduate and have no specific curricular objective.
Auditors	Those who do not wish academic credit.

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Transcripts. One copy of a student's record will be furnished free upon the request of the student, provided all accounts with the school are paid in full. All subsequent transcripts and official transfers to other schools will cost $2.00 each.

Course Numbering System. The first digit usually signifies the level of the course such as first, second, third or fourth year. The second digit suggests in what term the course is normally offered. If this number is odd the course is usually offered in the Fall term, if even, the course is ordinarily a Spring term subject. May and June term subjects will be distinguised by an "O" in this place. The last number refers to the number of credits given to the course and usually the number of times the class meets per week. This does not apply to Physical Education classes, however, which meets twice a week and receives one credit.

Reading Improvement Program. For those who need help with reading and all who want to be more efficient in their study, a special course is offered each year geared to double and even triple reading speed. The program's effectiveness is developed through the use of professional visual aids and a concentration

on basic speed-reading techniques. The course covers three weeks, six hours, and costs $25.00. No credit is granted for this work.

SCHOLASTIC HONORS

Dean's Lists. After the Fall and Spring terms, certificates are issued to all who have earned the right to be on the Dean's Lists. Candidates must meet the following requirements:

1. Must be a full-time student.
2. Must have an excellent deportment record.
3. Must have a quality point average of at least 3.00 for Honors and 3.75 for Highest Honors, with no grades below "C".

Honor Society. Valley Forge Christian College is a member of the Delta Epsilon Chi (Approved in Christ—Romans 16:10) honor society. Up to 7% of the graduating class who have maintained at least a 3.3 quality point average are eligible for consideration. Christian character, leadership ability, and school loyalty are further requirements. The insignia of membership is a pin or key and a certificate. Nomination to the membership will be made by the faculty at the beginning of the student's last semester before graduation.

PRACTICAL TRAINING PROVISION

A dominant and distinctive feature of the program at VFCC is the provision for developing proficiency in professional techniques. This is an apprenticeship situation, dynamically geared to develop latent potential and aid maturation of the individual's abilities. The Christian Service program provides the vital educational function of unifying and giving meaning to classwork. Broad general education, communication skills, ministry techniques, and the dynamic of the Christian life all come to have new and realistic meaning.

Each student is given a minimum of 35 assignments which must be satisfactorily completed before he can graduate. These assignments include a variety of ministries, selected by the Director of Christian Service in keeping with the individual student's needs, aspirations and chosen field of ministry. Experiences may be provided in the areas of Bible clubs, canvassing, street meetings, junior churches, young peoples meetings, teaching in Sunday School, services in jails and old folks homes, and in song leading and preaching in church services.

Not only do students gain valuable experience, but also each year many souls find Christ as Savior through their ministry.

GENERAL REQUIREMENTS FOR GRADUATION

1. For graduation in a four-year program, a passing grade in subjects covering 126 credits and a quality point average of 2.00 or better, is necessary.
2. For graduation in the three-year program, a passing grade in subjects covering 96 credits and a quality point average of 1.5 or better, is necessary.
3. For graduation in the one-year program, a passing grade in subjects covering 32 credits and a quality point average of 1.5 or better, is necessary.

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4. Soundness in doctrine.
5. Acceptible deportment and regular attendance in chapel.
6. Evidence of development and dependability in Christian Service. Each student shall satisfactorily fulfill a minimum of 35 Christian Service assignments, distributed among the various types as determined by the director of the department in keeping with the student's chosen objective.
7. Completion of at least the final year's work of 30 credits at VFCC (Special arrangements may be made for graduates of the earlier three-year program.)
8. Accounts with the College paid in full.

NON-RESIDENCE PROGRAM FOR COLLEGE CREDIT

1. *Guided Individual Studies Program.* (Covering provisions commonly made by colleges under such headings as "tutoring," "directed reading," or "directed research.") VFCC uses the term "Guided Individual Studies" and such courses are included as part of the total number of courses taken during the term in which the GIS begins.

The GIS program is to be considered a supplementary program, arranged to meet specialized and specific needs in the overall educational program. The purpose is to provide a high-quality "Individual Studies" program that will help the student complete his chosen program. The privilege to study by GIS will be granted to a limited number of students who apply for it with the Academic Dean and can clearly show a valid cause for such study. This program is not to replace the classroom work or be a substitute for it.

The GIS program is open to an on-campus, class-attending student, under the following guidelines:

a. A GIS course must not be granted if the student can take a course in a regular class period or if they can arrange to take it at a later term.

b. For students needing courses for which the demand is insufficient to justify a regular class. The student must complete such courses by the end of the term in which he registers for it.
c. For students who must make up a course in order to graduate, but find an irreconcilable schedule conflict. The student must complete such courses by the end of the school term in which he registers.

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All GIS courses must be individually approved by the Academic Dean, to whom the teacher must give consent. No teacher shall assign work until the student presents a proper form, receipted by the Business Office to indicate that proper financial arrangements have been made in advance and certifying the approval of the Academic Dean. If the course is not completed within the time limit, a grade of "F" shall be given, unless extenuating circumstances warrant special consideration. The charge per credit hour shall be $30.00, which is not refundable, unless the student withdraws from the course before receiving assignments from the teacher.

2. *Extension Courses*
Extension courses are designed to help the following classes of people:

All who wish advance education but are unable to attend a college for residence study;
Ministers who need or want refresher courses; and
Teachers who wish to increase their training for greater effectiveness.

Courses and Credits
In quality and in content all credit courses are designed to be the equivalent of residence work at any college. They are carefully planned, the assignments are definite and the questions are clearly stated. The student is expected not only to acquire and recall facts but also to relate those facts to personal experience and Christian responsibility.

Courses are offered in the fields of Bible and Theology, Pastoral Training, Missions, Christian Education, Biblical Languages, Philosophy, English, Natural and Social Sciences, History and Music. A description of each will be found under the proper heading.

A maximum of 15 credits of external studies may be applied to a degree program at Valley Forge Christian College.

The preparation of courses and grading of lessons are done under the direction of the department chairmen.

Procedures

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You study independently. A study guide has been prepared primarily for this use. The guide and the textbooks on which it is based make up the course. All of your work except for the final examination can be completed by mail. This must be written in the presence of an approved VFCC examiner, who will also have two sessions with you during your course. To obtain credit you must pass the final examination and your course grade will be based on the final examination, plus any special assignments which you are instructed to present as a part of the exam. A is excellent; B, above average; C, average; D, below average; and F, failure.

Costs

1. $2.00 application fee is payable in advance when enrolling for each course.
2. Tuition for extension courses is $20.00 per credit hour, payable in advance and non-refundable or transferable ($60.00 per course).
3. A study guide and textbook will be supplied by the college at list price. This averages $16.00 per course.

NOTE: As pre-requisite for college credit toward any degree, the student should have completed a four-year high school course or its equivalent as demonstrated by an adequate examination.

To apply for extension credit fill in the coupon, detach and mail.

Mail to: Registrar
Valley Forge Christian College
P.O. Box 810
Phoenixville, PA 19460

Please enroll me in the following course(s) by independent study.
I enclose $78 for each course, textbooks, and registration fee.

99

- ☐ Introduction to the Old Testament
- ☐ Galatians and Romans
- ☐ The Gospel of John
- ☐ Introduction to Missions
- ☐ Christology
- ☐ New Testament Survey
- ☐ Soteriology
- ☐ Introduction to Psychology

Name_____ Street Address_____ City and State_____ Zip Code _____

High School attended _____ Year of High School Graduation _____

3. *Life Experience*

The Faculty of Valley Forge Christian College recognizes that learning takes place in a variety of ways and through a variety of experiences. Obviously, a great deal of valid learning takes place outside the traditional college or university classroom. Our Life Experience program takes note of these learning experiences and endeavors to translate them into actual academic credits. Any student is free to apply for college credit by Life Experience.

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To receive academic college credit for Life Experience, five criteria must be satisfied:

1. the candidate must apply through proper channels to be admitted into the program;
2. all learning must be related to courses, disciplines, academic areas, and/or academic programs offered here at VFCC;
3. all learning must be articulated;
4. vertification and documentation of all learning experiences must be presented; and
5. the proper fees must be fully paid.

The Continuing Education Committee, working closely with consultants, determines when credits are warranted and recommends such credits to the Academic Dean.

Curriculum

GENERAL OVERVIEW OF THE CURRICULUM

The primary purpose of Valley Forge Christian College is to train leaders for church related ministries. To fulfill this purpose, training is offered under the following programs:

FOUR-YEAR DEGREE PROGRAMS:

A. The Ministerial Program—especially prepared for those students who wish to prepare themselves for pastoral or evangelistic ministries (see page 44 for details);
B. The Missionary Program—especially developed for those students who wish to prepare themselves for home or foreign missionary ministries (see page 46 for details);
C. The Christian Education Program—especially designed for those students who wish to enter the teaching ministries of the Church (see page 48 for details).

THREE-YEAR CERTIFICATE PROGRAMS:

A. The Ministerial Program—an abbreviated program of study which concentrates on the pastoral aspects of ministry (see page 50 for details);
B. The Missionary Program—a shortened study program which provides the basic skills for the missionary service (see page 52 for details);
C. The Christian Education Program—a limited program which provides the basic teaching methodology for ministries within a local church (see page 54 for details);
D. The Bible Concentration Program—a program of study which is designed to give the student a thorough and practical knowledge of the Bible (see page 56 for details).

ONE-YEAR CERTIFICATE PROGRAM:

This program of study is developed primarily for those persons who desire personal enrichment in Bible and Theology. This course would be especially beneficial for Sunday School teachers, Bible study group leaders, Youth group leaders and other persons in local church leadership positions. Also, this is an ideal course for adult education in Bible and Theology (see page 56 for details).

DETAILED DESCRIPTION OF THE CURRICULUM

Four-year Bachelor of Science in Bible degree:
The Ministerial Program

This program is designed to prepare the student for service in the pastoral or evangelistic ministries. A total of 126 credits are needed for graduation and a satisfactory completion of this course will:

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1. provide the student with foundational knowledge in Bible, Theology, and other essentials designed to develop skill in conducting services and preaching;
2. supply information about human behavior, church polity, and general education so as to enable the graduate to deal with the problems which he may encounter in his field of service;
3. engender such ideals, interests, attitudes, and consecration as will properly motivate him in his chosen calling, so that no sacrifice or suffering will seem too much to bear for the sake of Christ; and
4. impress the need for evangelism and vital outreach into this society.

Requirements:

Bible (Bi 113,122,123,103,223,312 or 362 + 14 electives)	30 credits
Theology (Th 213,223,313 + 2 electives)	11 credits
Ministerial (CE 113, Pa 112,213,413,322 or 342,452,422 + 4 electives)	24 credits
General Education (La 133,143,153 or 163, Sp 143, Mu 122, SS 123,343,453, 213, Sc 313 or 423, PE 171,181, + 13 electives)	44 credits
Electives	17 credits
Total	126 credits

Suggested Schedule for four-year Ministerial Program

Freshman Fall Term	**hrs.**
• Intro. to Old Testament	3
Ancient History	3
• Personal Evangelism	2
• American Lit. or *Fresh. English	3
• Intro. to Christian Ed.	3
• Physical Education	1
	15

Freshman Spring Term	**hrs.**
• Early Christian History	2
• Intro. to Music	2
• Composition	3
• Fund. of Public Speaking	3
• Prin. of Sociology	3
• Intro. to New Testament	3
• Physical Education	1
	17

May Term—*Early Hebrew History 3 hrs.

Sophomore Fall Term	
• European History I	3
• Homiletics	3
• Theology I	3
Hermeneutics	2
I & II Corin. & Thess.	3
Conducting I	2
	16

Sophomore Spring Term	
• Romans & Galatians	3
U.S. History I	3
• Theology II	3
Anthropology	3
Biblical Intro.	2
Hebrew Literature	2
	16

Junior Fall Term	
• Theology III	3
Daniel & Rev. or Greek IA	3
Religions or U.S. Hist. II	3
• Survey of Physical Sc.	3
Pastoral Epistles	2
•• Minor Propets	2
	16

Junior Spring Term	
Theology IV	2
Missiology or C.E. of Adults	2 (or 3)
Soc. Problems or Greek IB	3
• Intro. to Psychology	3
••• Evang. or Expos. Preaching	2
•• Major Propets or Epistle to the Hebrews	2
	14-15

Senior Fall Term	
• Intro. to Philosophy	3
Gospel of John or Greek IIA	3
• Leadership Seminar	2
• Church Administration	3
Cults	2
Miss. Prin. & Pract. or Christian Ethics	3
	16

Senior Spring Term	
Finance	2
Apologetics	3
• Pastoral Procedures	2
Psych of Co. or Biology	3
New Testament Theology	3
Prison Epistles or Greek IIB	2(or 3)
	15-16

• indicates required courses
•• Minor or Major Prophets required
••• Evangelistic or Expository Preaching required—offered in alternate years

Four-year Bachelor of Science in Bible degree:
The Missionary Program

This program is designed to prepare the student for service as a home or foreign missionary. A total of 126 credits are needed for graduation and a satisfactory completion of this course will:

Curriculum 46

1. acquaint the student with the inception and development of various movements for the purpose of determining the most promising methods of missionary work in the light of experience and the teaching of Scripture;
2. inform the student of the philosophy, history and practice of diverse world religions so as to enable him to present the Truth in a manner best suited to bring men into the light of the knowledge of God;
3. convince the student of the necessity of adequate training for missionary work, both spiritually and academically, and to make him aware of the many demands for which he must be prepared, intellectually, emotionally, and physically; and
4. inspire the student by the study of the devotion and sacrifice of great missionary leaders to a complete consecration in fulfilling the Great Commission.

Requirements:

Bible (Bi 113,122,123,103,223,312 or 362 + 14 electives)		30 credits
Theology (Th 213,223,313 + 2 electives)		11 credits
Missionary (Mi 263,333,323,413 + 6 electives)		18 credits
Ministerial (CE 113, Pa 112,213,413, 452,422 + 2 electives)		17 credits
General Education (La 133,143,153 or 163, Sp 143, Mu 122, SS 123, 343,453,213, Sc 313 or 423, PE 171,181 + 13 electives)		44 credits
Electives		6 credits
	Total	126 credits

Suggested Schedule for four-year Missionary Program

Freshman Fall Term	**hrs.**
• Intro. to Old Testament	3
• Personal Evangelism	2
• American Lit. or *Fresh. English	3
• Intro. to Christian Ed.	3
Home Missions or Ancient History	2 (or 3)
• Physical Education	1
	14-15

Freshman Spring Term	**hrs.**
• Early Christian History	2
• Intro. to Music	2
• Composition	3
• Fund. of Public Speaking	3
• Prin. of Sociology	3
• Intro. to New Testament	3
• Physical Education	1
	17

May Term—*Early Hebrew History 3 hrs.

Sophomore Fall Term	
• European History I	3
• Homiletics	3
• Theology I	3
Hermeneutics	2
I & II Corin. & Thess.	3
Cross Cult. Comm.	3
	17

Sophomore Spring Term	
• Romans & Galatians	3
U.S. History I	3
• Theology II	3
• Anthropology	3
Biblical Intro.	2
Hebrew Literature	2
	16

Junior Fall Term	
• Theology III	3
Daniel & Rev. or Greek IA	3
• Religions	3
• Survey of Phys. Sciences	3
Pastoral Epistles	2
•• Minor Prophets	2
	16

Junior Spring Term	
•Intro. to Psychology	3
•Missiology	3
Hist. of Missions or Greek IB	3
Contemp. Theo. or Soc. Prob.	3
•••Evang. or Expos. Preaching	2
••Major Prophets or Epistle to the Hebrews	2
	16

Senior Fall Term	
• Intro. to Philosophy	3
Gospel of John or Greek IIA	3
• Leadership Seminar	2
• Church Administration	3
• Miss. Prin. & Pract.	3
Cults	2
	16

Senior Spring Term	
Finance	2
Apologetics	3
• Pastoral Procedures	2
Psych. of Co. or Phil. of Missions or Biology	2 (or 3)
New Testament Theology	3
Prison Epistles or Greek IIB	2 (or 3)
	14-16

• indicates required courses
•• Minor or Major Prophets required
••• Evangelistic or Expository Preaching offered in alternate years

Four-year Bachelor of Science in Bible degree:
The Christian Education Program

This program is designed to prepare the student for the educational ministries in the church. A total of 126 credits are needed for graduation and a satisfactory completion of this course will:

Curriculum 48

1. prepare the student for the educational ministries in the church—the Sunday School, Vacation Bible School, released time programs, youth development, adult training, and related activities;
2. develop high spiritual and moral standards in the future leaders of our churches so as to insure having teachers who are properly oriented to teach the coming generations of Pentecostal youth;
3. motivate the student in developing his creative talents through the use of modern teaching methods and aids, and by clinical application in field work; and
4. inspire those enrolled in other programs in the school to realize that the responsibility for evangelizing and training people of all ages rests also upon the pastor, the evangelist, and the missionary, and encourage them to add some Christian Education work to their chosen fields.

Requirements:

Bible (Bi 113,122,123,103,223)		14 credits
Theology (Th 213,223)		6 credits
Bible/Theology electives		10 credits
Christian Education (Pa 112,213, CE 113, 242, (222,332 or 322**), 313,422 + 8 electives)		27 credits
General Education (La 133,143,153 or 163, Sp 143, Mu 122, SS 123,343, 453,213, Sc 313 or 423, PE 171, 181 + 13 electives)		44 credits
Electives		25 credits
	Total	126 credits

Suggested Schedule for four-year Christian Education Program

Freshman **Fall Term**	**hrs.**
• Intro. to Old Testament	3
Ancient History	3
• Personal Evangelism	2
• American Lit. or *Fresh. English	3
• Intro. to Christian Ed.	3
• Physical Education	1
	15

Freshman **Spring Term**	**hrs.**
• Early Christian History	2
• Intro. to Music	2
• Composition	3
• Fund. of Public Speaking	3
• Prin. of Sociology	3
• Intro. to New Testament	3
• Physical Education	1
	17

May Term—*Early Hebrew History 3 hrs.

Sophomore **Fall Term**	
• European History I	3
• Homiletics	3
• Theology I	3
Child Evangelism	2
I & II Corin. & Thess.	3
Conducting I	2
	16

Sophomore **Spring Term**	
•Romans & Galatians	3
U.S. History I	3
•Theology II	3
•Phil. of Christian Ed	2
Biblical Intro.	2
••C.E. of Children	2
	15

Junior **Fall Term**	
Theology III	3
Daniel & Rev. or Greek IA	3
••C.E. of Youth or U.S. Hist II	2 (or 3)
•Principles of Teaching	3
•Survey of Phys. Science	3
Minor Prophets	2
	16-17

Junior **Spring Term**	
• Intro. to Psychology	3
••C.E. of Adults or Soc. Prob.	2 (or 3)
Missiology or Greek IB	3
Contemporary Theology	3
Story Telling & Ch. Music	2
Major Prophets or Epistle to the Hebrews	2
	15-16

Senior **Fall Term**	
• Intro. to Philosophy	3
Gospel of John or Greek IIA	3
Leadership Seminar	2
Church Administration	3
Cults	2
Miss. Prin. & Pract. or Christian Ethics	3
	16

Senior **Spring Term**	
Finance	2
• Audio-Visual Ed.	2
Pastoral Procedures	2
Psych of Co. or Biology	3
New Testament Theology	3
Prison Epistles or Greek IIB	2 (or 3)
	14-15

• indicates required subjects
•• two of these three courses (CE 222,332, or 322) are required.

Three-Year Certificate:
The Ministerial Program

This program of study concentrates on the pastoral aspects of the ministry. It is an abbreviated course of study which touches upon the fundamentals of effective service in the church. A total of 96 credits are needed for graduation. The objectives of this program are:

Curriculum 50

1. prepare the student for an effective ministry within the local church;
2. lead the student into understanding the nature of the gospel and the mission of the church;
3. familiarize the student with the methods and tools for sharing the gospel in contemporary society; and
4. motivate the student to redeem each opportunity for service and ministry.

Requirements:

Bible (Bi 113,122,123,103,223 + 11 electives)		25 credits
Theology (Th 213,223 + 3 electives)		9 credits
Ministerial (CE 113, Pa 112,213,413,422 + 9 electives)		25 credits
General Education (La 133,143, Sp 143, Mu 122, SS 123,213, PE 171,181)		19 credits
Electives		18 credits
	Total	96 credits

Suggested Schedule for three-year Ministerial Program

Freshman **Fall Term**	**hrs.**	**Freshmen** **Spring Term**	**hrs.**
• Intro. to Old Testament	3	• Early Christian History	2
• Personal Evangelism	2	• Intro. to New Testament	3
• Intro. to Christian Ed.	3	• Composition	3
• Freshman English	3	• Fund. of Public Speaking	3
Ancient History	3	• Intro. to Music	2
• Physical Education	1	• Prin. of Sociology	3
	15	• Physical Education	1
			17

May Term—•Early Hebrew History 3 hrs.

Sophomore **Fall Term**		**Sophomore** **Spring Term**	
• Theology I	3	• Romans & Galatians	3
• Homiletics	3	• Theology II	3
• European History I	3	Biblical Intro.	2
Hermeneutics	2	Intro. to Psychology	3
I & II Corin. & Thess.	3	Evang. or Expos. Preaching	2
Daniel & Revelation	3	Major Prophets	2
	17		15

Junior **Fall Term**		**Junior** **Spring Term**	
• Church Administration	3	• Pastoral Procedures	2
Theology III	3	Psych. of Co.	3
Gospel of John	3	Apologetics	3
Leadership Seminar or Minor Prophets	2	•• Missiology, Anthropology, or History of Missions	3
Cults	2	Social Problems	3
Pastoral Epistles	2	Finance	2
	15		16

• indicates required courses
•• a three hour course in missions is required

Three-Year Certificate:
The Missionary Program

This program of study is designed to provide the basic skills needed for service in the home and foreign missionary ministries. A total of 96 credits are required for graduation and a successful completion of this course will:

Curriculum 52

1. help the student appreciate the Great Commission and understand the evangelistic thrust of the gospel;
2. provide opportunities for the student to fully respond to the call of the Lord in his or her personal life;
3. develop the basic skills needed for missionary service and ministries; and
4. assist the student in recognizing and using all personal opportunities for sharing his or her Christian faith.

Requirements:

Bible (Bi 113,122,123,103,223 + 11 electives)		25 credits
Theology (Th 213,223 + 3 electives)		9 credits
Missionary (Mi 333,323,413 + 6 electives)		15 credits
Ministerial (CE 113, Pa 112,213,413 + 4 electives)		15 credits
General Education (La 133,143, Sp 143, Mu 122, SS 213,123, PE 171,181)		19 credits
Electives		13 credits
	Total	96 credits

Suggested Schedule for three-year Missionary Program

Freshman **Fall Term**	**hrs.**
• Intro. to Old Testament	3
• Personal Evangelism	2
• Intro. to Christian Ed.	3
• Freshman English	3
I & II Corin. & Thess.	3
• Physical Education	1
	15

Freshman **Spring Term**	**hrs.**
• Early Christian History	2
• Intro. to New Testament	3
• Composition	3
• Fund. of Public Speaking	3
• Intro. to Music	2
• Prin. of Sociology	3
• Physical Education	1
	17

May Term—*Early Hebrew History 3 hrs.

Sophomore **Fall Term**	
• Theology I	3
• Religions	3
• Homiletics	3
• European History I	3
Hermeneutics	2
Daniel & Revelation	3
	17

Sophomore **Spring Term**	
• Romans & Galatians	3
• Theology II	3
• Missiology	3
Biblical Intro.	2
Anthropology	3
Hebrew Lit or Epist. to Heb.	2
	16

Junior **Fall Term**	
• Miss. Prin. & Pract.	3
• Church Administration	3
Cross-Cult. Comm.	3
Cults	2
Pastoral Epistles	2
Leadership Seminar or Minor Prophets	2
	15

Junior **Spring Term**	
Pastoral Procedures	2
Philosophy of Missions	2
History of Missions	3
New Testament Theology	3
Apologetics	3
	13

• indicates required courses

Three-Year Certificate:
The Christian Education Program

This course has been especially prepared for those students who wish to enter teaching ministries within the local church. A total of 96 credits are required for graduation and the student who completes this study program will:

Curriculum 54

1. be able to appreciate the timely and applicable truths of the Bible;
2. have a basic knowledge of the principles and methods of effective teaching;
3. be motivated to seek out and use each opportunity for sharing the gospel; and
4. be sensitive to the evangelistic passion of God.

Requirements:

Bible (Bi 113,122,123,103,312 + 11 electives)	25 credits
Theology (Th 213,223)	6 credits
Christian Education (Pa 112,213, CE 113,242, (222,332 or 322**), 313,422 + 6 electives)	25 credits
General Education (La 133,143, Sp 143, Mu 122, SS 213,123, PE 171,181)	19 credits
Electives	21 credits
Total	96 credits

Suggested Schedule for three-year Christian Education Program

Freshman **Fall Term**	**hrs.**	**Freshman** **Spring Term**	**hrs.**
• Intro. to Old Testament	3	• Early Christian History	2
• Personal Evangelism	2	• Intro. to New Testament	3
• Intro. to Christian Ed.	3	• Composition	3
• Freshman English	3	• Fund. of Public Speaking	3
Ancient History	3	• Intro. to Music	2
• Physical Education	1	• Prin. of Sociology	3
	15	• Physical Education	1
			17

May Term—•Early Hebrew History 3 hrs.

Sophomore **Fall Term**		**Sophomore** **Spring Term**	
• Theology I	3	•Romans & Galatians	3
• Homiletics	3	•Theology II	3
• European History I	3	•Philosophy of C.E.	2
Child Evangelism	2	••C.E. of Children	2
I & II Corin. & Thess.	3	Intro. to Psychology	3
Conducting I	2	Biblical Introduction	2
	16		15

Junior **Fall Term**		**Junior** **Spring Term**	
••C.E. of Youth or Lead. Seminar	2	•• C.E. of Adults	2
•Principles of Teaching	3	• Audio-Visual Ed.	2
Gospel of John	3	Psychology of Counseling	3
Daniel & Revelation	3	Story Telling & Ch. Music	2
Church Administration	3	Missiology	3
Cults	2	Social Problems	3
	16		15

• indicates required courses

•• two of these three courses (CE 222,332, or 322) are required

Three-Year Certificate: The Bible Concentration Program

This program is designed primarily for those who do not plan to enter a field of ministry on a full-time basis, but desire to prepare themselves to be a more effective witness for Christ. A total of 96 credits are needed for graduation. The program offers a maximum of Bible and Theology subjects, and an exposure to professional studies. Academic counselors will assist in working out a well-rounded program to meet the goals and needs of the individual student. The objectives of this course are:

Curriculum 56

1. prepare students to contribute more substantially to the work of the church in such ministries as Sunday School, Vacation Bible School, Youth Work, Child Evangelism, Jail Services or any other church programs; and
2. enable those Christians who plan to go into some other field of service, to become better established in the knowledge of God's word, before entering a secular college. The studies in Bible and Theology will provide a good foundation for Christian faith and service.

Requirements: (all electives)		
Bible		40 credits
Theology		14 credits
Professional Studies		30 credits
General Education		12 credits
	Total	96 credits

One-Year Certificate: The Personal Enrichment Program

This program of study has been developed purely for those involved and concerned individuals who desire a thorough and Biblically-based educational background for their ministries. The program is totally elective and allows for complete freedom to be adapted to the needs and desires of the individual student. A total of 32 credits are required for graduation and a successful completion of these studies will enable the student to:

1. secure a solid foundation of Biblical knowledge and develop a deep respect for the truths of the Bible;
2. respond to the evangelistic passion of God for a lost generation; and
3. have a general overview of effective teaching methods.

Requirements: (all electives)		
Bible		15 credits
Theology		6 credits
Professional Studies		11 credits
	Total	32 credits

Evangelical Teacher Training Association Program

Diploma Requirements

In cooperation with the Evangelical Teacher Training Association, which was formed in 1930 for the purpose of standardizing requirements for prospective Christian workers studying in the schools of various denominations, VFCC offers the E.T.T.A. Standard Teachers' Diploma to graduating students who complete the requirements listed below. This diploma is of value to those who plan to do work of an interdenominational nature in the Christian Education field. A $4.00 diploma fee is charged by the Association.

Valley Forge Christian College 57

General areas and minimum requirements for the ETTA diploma:

Bible (see A)	10 hours
Christian education (see B)	11 hours
Missions (see C)	3 hours

A. Bible—Bible is defined as the direct study of the Bible, including proper emphasis in the areas of Biblical introduction, Bible history, and Bible geography.

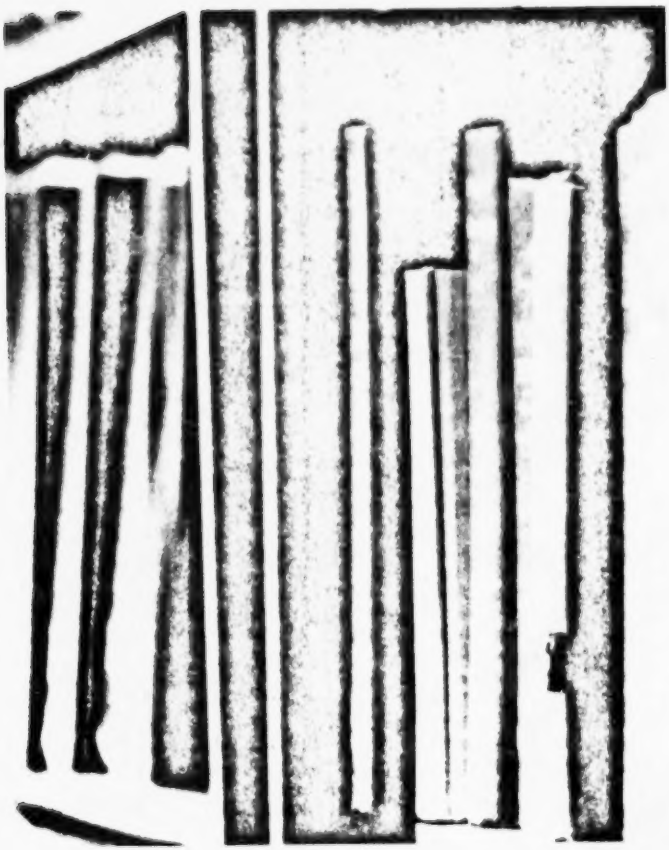
B. Christian Education—Christian Education shall include the study of personal evangelism and courses in principles and methods of teaching, human development, church educational program and practicum.

The requirements in Christian Education may be met by the following courses:

Personal Evangelism
Principles of Teaching
Christian Education of Children, Youth, or Adults
Introduction to Christian Education
any Christian education elective

C. Missions—A survey of missions (Missiology) course is required.

Description of Courses



DIVISION OF BIBLE AND THEOLOGY

Bi 222 Biblical Introduction *Two credits*
A study of the origin and history of the Bible which traces the ancient manuscripts to the present-day translations. Special attention is given to the text and principal versions based on the most authoritative existing manuscripts.

Bi 343 Biblical Archaeology *Three credits*
Designed to aid the student in his appreciation and understanding of the Biblical record from the study of ancient buried cities and related discoveries of the Biblical world.

Bi 493 Bible Lands Field Seminar *Three credits*
For those who take an approved guided lecture tour of Bible lands, credit will be given if a detailed description of the itinerary is given in a lengthy paper correlating it with Biblical references. This is to be reviewed by several Faculty members.

Old Testament

Bi 113 Introduction to the Old Testament *Three credits*
The framework and general content of the Old Testament is surveyed and then special attention is given to the first five books. This provides a factual and practical groundwork for further studies in the Old Testament.

Bi 103 Early Hebrew History *Three credits*
This course includes the books from Joshua through Esther and traces the development of Israel into a kingdom and its subsequent dissolution. Attention is given to the theme of each book and the lessons derived from the relations of the kings to God.

Bi 282 Hebrew Literature *Two credits*
The books of Job through Song of Solomon are examined for the wealth of deep spiritual truth they contain. Emphasis is given to the book of Job and to Song of Soloman.

Bi 362 Major Prophets *Two credits*
The study of this subject has a two-fold objective, namely, a survey of the books of Isaiah, Jeremiah, and Ezekiel in their relationship to each other as well as the specific message of each book applied to the need of our day.

Bi 312 Minor Prophets *Two credits*
Each book from Hosea to Malachi is treated as a separate unit. The historical, prophetical, and practical values of these books are considered.

Bi 333 Daniel and Revelation *Three credits*
The book of Daniel is studied from both a prophetic and a practical standpoint. A futuristic interpretation is given of the prophecies of the book of Revelation. The messages of both books are related to the general prophetic truth of Scripture.

New Testament

Bi 123 Introduction to the New Testament *Three credits*
This survey gives a panoramic view of the chief events, prominent characters, and salient teachings of each New Testament book in relation to the historical, geographical, and cultural contexts.

Bi 482 Synoptic Gospels *Two credits*
The student is lead into a complete and comprehensive study of the three Synoptic Gospels, including the background and authorship of each book and its particular content and orientation. The life and ministry of Christ in chronological sequence is carefully developed in the process of this study.

Bi 433 Gospel of John *Three credits*
An exegetical study of the fourth gospel. Careful consideration is given to the deity of Christ and the coming and work of the Holy Spirit.

Bi 122 Early Christian History (Acts) *Two credits*
A study of the historical origins of the Christian church. Special emphasis is placed upon the work of the Holy Spirit in the church, and the command to witness everywhere.

Bi 223 Romans and Galatians *Three credits*
An exegetical and synthetic study. Justification by faith and other great truths are discovered and analyzed. Both the doctrinal and devotional aspects are stressed as being necessary to each other.

Bi 233 I & II Corinthians and I & II Thessalonians *Three credits*
Paul's treatment of church problems and discipline is discussed and application is made to the present-day church. Detailed attention is given to the chapters dealing with the gifts of the Holy Spirit. A historical, doctrinal, and devotional approach is made to the epistles to the Thessalonians. Themes and Christocentric doctrines are noted.

Bi 422 Prison Epistles *Two credits*
A historical, doctrinal, and devotional approach is made to Ephesians, Philippians and Colossians. The themes and subdividions of the letters are ascertained and the Christocentric doctrines noted.

Bi 332 Pastoral Epistles *Two credits*
A historical and exegetical study of the Epistles of Paul—I Timothy, II Timothy, Titus, and Philemon. Emphasis is placed upon the practical aspect of the Epistles and application is made to the modern day church setting.

Bi 342 Epistle to the Hebrews *Two credits*
This study embraces an exegesis of Hebrews to show the exaltation of Christ as God's final and complete revelation of Himself and His truth to mankind, with stress on the fulfillment of Old Testament typology.

Bi 352 General Epistles *Two credits*
An historical, practical, and doctrinal approach to the letters of James, Peter, John, and Jude.

Theology

Th 213 Systematic Theology I *Three credits*
Bibliology, Theology and Pneumatology are studied. This covers the inspiration of the Scripture, the doctrine of God, and the nature and activity of the Holy Spirit.

Th 223 Systematic Theology II *Three credits*
Angelology, Anthropology, Hamartiology, and Christology are included in this study. This covers the doctrines of angels, man, sin, and the person and work of Christ.

Th 313 Systematic Theology III *Three credits*
Soteriology, Ecclesiology, and Eschatology are examined in this course. This covers the doctrines of salvation, the church, and last things.

Th 322 Theology IV *Two credits*
A specialized study of the doctrine of Pneumatology. The Person, manifestations, fruits and gifts of the Spirit are a significant part of this course.

Th 423 New Testament Theology *Three credits*
An examination of the New Testament documents to discover the unity and diversity of their theological emphases. This is an integrating course designed to give the student an overview of the key theological concepts in the New Testament. Emphasis is placed upon the unique theological contributions of each New Testament writer.

Th 343 Contemporary Theology *Three credits*
A survey of the trends in theological writings since the seventeenth century enlightenment to the present day, especially following World War I. An analysis of these writings is carried on in the context of the Evangelical theological position of conservatism. Each author is studied for his ideas as they have been an influence in the modern Christian world.

DIVISION OF PROFESSIONAL STUDIES

Ministerial

Pa 112 Personal Evangelism *Two credits*
This study deals with the methods of winning an individual to a personal faith in Christ. Instruction is given in such aspects of evangelism as tract distribution, street services, and house-to-house visitation. Important Scriptures are memorized.

Pa 212 Hermeneutics *Two credits*
The proper principles of Biblical interpretation are given along with the practical application of those principles to the exegetical study of the Scriptures.

Pa 213 Homiletics *Three credits*
This course includes an examination of the meaning of homiletics, salient definitions, the ingredients necessary for a successful sermon, the major types of homiletical messages, and the essential parts of a sermon. Also, students apply the knowledge learned by actual classroom practice and sermon evaluation. (Pre-requisite Fundamentals of Public Speaking, Sp 143)

Pa 322 Evangelistic Preaching *Two credits*
Methods and factors involved in preaching to win men to Christ are studied in this course. Classroom practice and analysis is included. (Offered in '77-'78—alternates with Pa 342.) (Pre-requisite: Sp 143.)

Pa 342 Expository Preaching *Two credits*
A continuation of Homiletics with attention given to the application of homiletical principles to expository preaching. (Pre-requisite: Sp 143, Pa 213) (Offered in '78-'79—alternates with Pa 322).

Pa. 312 Women's Ministries *Two credits*
This is a course of study especially dealing with the ministry of women. Since God has made women men's counterpart, ministry is viewed from this angle. The role of a minister's wife is defined objectively in this study of women's ministries.

Pa 423 Apologetics *Three credits*
A systematic defense of the Christian faith is presented. The Bible is shown to be God's all-sufficient revelation to man.

Pa 473 Christian Ethics *Three credits*
An introductory study is made to compare Christian ethics with philosophic ethics. A broad perspective of both historic and modern interpretations of the formulation of the ethical norm followed by the implementation of ethical decisions constitutes the primary goal of the course.

Pa 413 Church Administration *Three credits*
A course designed to promote the application of efficient business-like principles to the administration of the affairs of the church. The theological concepts of the nature and mission of the church are developed as a vital basis for purposeful church administration. A study of the administrative structure of the Assemblies of God is also considered.

Pa 432 Cults *Two credits*
Both the traditional and the newer growing cults are analyzed. Careful study is given to the character of the founder, the history of the cult and the theological tenets of each group. A scriptural appraisal is made of each group.

Pa 442 Finance *Two credits*
This course begins with an examination of the theology of giving and seeks to develop a practical approach to church finance. The varied questions concerning both personal and church financing are thoroughly dealt with. Basic bookkeeping principles are presented.

Pa 452 Leadership Seminar *Two credits*
This seminar for seniors correlates leadership principles they have learned during their previous years of class work and exposes them to specialists with expertise in various fields of Christian ministry.

Pa 403 Ministerial Practicum *Three credits*
Credit is given to those students who engage in nine (9) weeks of ministerial service, approved by VFCC. A journal of activities and evaluation by the pastor are required.

Pa 422 Pastoral Procedures *Two credits*
The call, qualification, preparation, duties, and problems of a pastor are studied. Guidance is given in the use of efficient methods and ethical procedures in pastoral work. A thorough examination is given to the specific ceremonies and particular ministries through which the pastor serves his congregation.

Pa 443 Psychology of Counseling
Three credits
Instruction is given in the principles and techniques of counseling. The student learns to counsel individuals with spiritual, mental, and physical problems. (Pre-requisite Introduction to Psychology, SS 343)

Missionary

Mi 112 Home Missions *Two credits*
An examination of the methods and techniques which have been found successful in building home mission churches. Work with various ethnic groups is introduced and guidelines set in linguistic and intercultural awareness.

Mi 233 Cross-Cultural Communications
Three credits
An introductory course in communications between those of various cultures, core culture and value orientations. The silent language and the overseas American with his cross-cultural problems are brought into focus.

Mi 263 Cultural Anthropology *Three credits*
A study of basic concepts of the origin and antiquity of man, the diversities of human cultures, racial criteria, social characteristics, language and religion especially as it is related to the work of the missionary.

Mi 343 History of Missions *Three credits*
Beginning with the early church, the advance of missions is traced through each era and its worldwide effect on the course of history.

Mi 323 Missiology *Three credits*
This course is a survey of missionary activities of the church. A study is made of the major mission fields of the world.

Mi 333 Religions of Mission Fields
Three credits
A study of the origin, growth, and influences of the outstanding ethnic religions. It includes a comparison and contrast of these religions with Christianity. A study is also made of the doctrine and practice of Roman Catholicism.

Mi 303 Specialized Missions GIS
Three credits
This course is designed for the missionary student with a call to a specific area of ministry. The instructor directs the individual student in special research to give him an understanding of the people and the land of his calling.

Mi 403 Missionary Practicum *Three credits*
Credit is given to those students who engage in six (6) weeks of overseas missionary service, approved by VFCC. A journal of activities and evaluation by the resident missionary are required. (AIM and MAPS programs)

Mi 413 Missionary Principles and Practices
Three credits
A study is made of the practical aspects of the missionary career, including the prospective missionary's calling, preparation, transportation, personal adjustment to a new environment, and problems encountered on the field.

Mi 422 Philosophy of Missions *Two credits*
The methods of philosophies of all major protestant and catholic mission endeavors are analyzed with an emphasis on the philosophy of missions of the Assemblies of God.

Christian Education

CE 113 Introduction to Christian Education
Three credits
This orientation course is designed to acquaint the student with the scope of the educational work of the church, with special emphasis on Sunday School.

CE 212 Child Evangelism *Two credits*
A study of the most effective methods of winning children to the Lord, including plans for promoting and conducting various children's meetings. Special emphasis is placed on the Vacation Bible School, Kids' Crusade, and Junior Church.

CE 222 Christian Education of Children
Two credits
A study of the characteristics, development, needs, and problems of children with the purpose of developing a properly organized educational program for the children's departments of the Sunday School.

CE 242 Philosophy of Christian Education
Two credits
A study of the origin, development, and principles of the educational framework of the church and an investigation of these principles as applied to contemporary Christian education.

CE 322 Christian Education of Adults
Two credits
An investigation of the characteristics, nature, and needs of adults at the various stages of their development in view of appropriate Christian education foundations and objectives. The distinctive nature of the adult learning process is studied in an effort to develop a program of local church education that will effectively minister to the needs of spiritually maturing adults. Particular attention is given to the church's ministry to older adults.

CE 332 Christian Education of Youth
Two credits
A specialized study of the developmental aspects of adolescence. Methods, organization and programs, adaptable to a broad scope of effective youth leadership are emphasized.

CE 313 Principles of Teaching *Three credits*
The principles underlying successful teaching are considered as they relate to the educational work of the church. Practice teaching is a required part of this course.

CE 342 Story Telling and Children's Music *Two credits*
Instruction and practice in the methods of story telling; the selection and use of effective music for the various age levels of children's groups.

CE 422 Audio-Visual Education *Two credits*
Various types of projected and non-projected aids are studied. Instruction and practice are given in the selection, preparation and use of the media to communicate Bible truth.

CE 403 Christian Education Practicum *Three credits*
Credit is given to those students who engage in nine (9) weeks of Christian education service, approved by VFCC. A journal of activities and evaluation by the pastor or supervisor are required.

Ed 213 Teaching Music in the Elementary School *Three credits*
Fundamental principles and procedures of music education in the elementary school.

Ed 223 Teaching Art in the Elementary School *Three credits*
Art through laboratory practice in painting, drawing, design, graphics, and various crafts, with particular reference to their appropriateness for teaching in the elementary school.

Ed 313 Teaching Reading in the Elementary School, I *Three credits*
A comprehensive study of the problems of teaching reading in the elementary school with implications for teachers.

Ed 323 Teaching Reading in the Elementary School, II *Three credits*
Designed to focus on the evaluative processes. Emphasis on recognizing and diagnosing reading problems and prescribing and using a variety of methods and materials to increase reading performance.

Ed 393 Elementary Curriculum *Three credits*
Purposes, organization, and curriculum of the elementary schools.

Ed 413 Teaching Social Studies in the Elementary School *Three credits*
Curriculum instructional approaches, and materials for teaching social studies in grade K-6. Emphasis placed on helping prospective teachers acquire background and skills in developing and teaching units of work.

Ed 423 Student Teaching *Three credits*
Student Teaching in the classroom in the student's major area. Seminars and continuous evaluation of teaching experiences.

Ed 443 Teaching Math in the Elementary School *Three credits*
Fundamental concepts of mathematics instruction and mathematics pertaining to the elementary school.

Ed 493 Introduction to Library Science *Three credits*
This course shall attempt to acquaint the student with the procedures of setting up libraries in churches and small religious schools. Simplified methods of acquiring, cataloging, and classifying books will be presented.

DIVISION OF GENERAL EDUCATION

English and Speech

La 153 American Literature *Three credits*
A study of American life and thought as expressed in American Literature from colonial times to the middle of the nineteenth century.

La 143 Composition and Rhetoric *Three credits*
A study of rhetoric and techniques designed to increase the student's ability to communicate in clear and forceful writing. Practical application is made in the writing of descriptive and narrative essays, paraphrases, letters, outlines, news articles, and the research paper. (Prerequisite: Freshman English—La 133).

La 173 English Literature *Three credits*
A study of the main trends and authors in English literary history from approximately 1400 to 1850. Special attention is given to the works of Milton, Bunyan, and the English romanticists. An introductory study of versification is included.

La 133 Freshman English *Three credits*
A review of the fundamentals of English including parts of speech, punctuation, basic sentence patterns, correct structure, and appropriate usage to assist the student in mastering acceptable English in preparation for effective communication.

Sp 143 Fundamentals of Public Speaking *Three credits*
Basic forms and techniques of public speaking are analyzed. Confidence and effectiveness in the delivery of various types of speeches is emphasized.

Languages

La 353 Deaf Ministries I *Three credits*
A study of American Sign language by the use of signs in sentence form. Lectures on selected topics in Audiology, Auditory Disorders, Speech and Language and Rehabilitation of the Deaf.

La 363 Deaf Ministries II *Three credits*
A study of American Sign language by the use of signs in sentence form. Lectures will be given on selected topics in Audiology, Auditory Disorders, Speech and Language, and Rehabilitation of the Deaf.

La 333,343 French I (A & B) *Two terms—each Three credits*
The essential elements of French grammar, pronunciation, simple conversation, reading and composition are studied.

La 313,323 Greek I (A & B) *Two terms—each Three credits*
The basic elements of New Testament Greek are studied with emphasis upon grammatical forms, syntax, and vocabulary. Readings in the Greek New Testament are included.

La 373,383 Spanish I (A & B) *Two terms—each Three credits*
Essential elements of Spanish grammar, pronunciation, simple conversation, reading and composition are studied.

La 433,443 French II (A&B) *Two terms—each Three credits*
Advanced study in French grammar, conversation is made and limited work in translation and composition is made.

La 413,423 Greek II (A & B) *Two terms—each Three credits*
Advanced study of Greek grammar. Emphasis during the first term is on translation; During the second term the emphasis is on the exegesis of selected passages from the Pauline epistles.

La 403 Greek Exegesis *Three credits*
Advanced work in the exegesis of chapters six through eight, twleve, and fourteen of the book of Romans.

La 453 Hebrew I *Three credits*
The basic elements of Old Testament Hebrew are studied with emphasis on the basic sentence structure and rules governing Hebrew.

La 463 Hebrew II *Three credits*
The building of a significant vocabulary to be able to use advanced reference works and a study of the way the seven verb roots are conjugated. (Pre-requisite La 453 or its equivalent)

La 473,483 Spanish II (A&B) *Two terms—each Three credits*
Intensive training in conversation with additional practice in grammar, reading and composition.

Music

Mu 122 Introduction to Music *Two credits*
After establishing a foundation in the basic fundamentals of music, this course proceeds to a study of church music and congregational song leading techniques.

Mu 131,141 Voice Class *Two terms—each One credit*
One period a week is devoted to the study of the principles of good voice culture. The class practices posture, tone production, breath control, and enunciation. This furnishes a background for private voice lessons.

Mu 232 Conducting I *Two credits*
An introduction to the basic techniques of conducting with special emphasis on directing congregational singing. Basic baton technique will be stressed along with the use of the body and facial expression as a means of communication. Prerequisite, Mu 122.

Mu 213,223 Theory of Music I & II *Two terms—each Three credits*
A study of eighteenth century harmonic techniques. Aural recognition of melodic, rhythmic, and harmonic dictation is stressed. (Prerequisite: Music 122 or a passing grade on the music entrance exam.) (Taught only when there is sufficient demand.)

Mu 322 Conducting II *Two credits*
This course is geared to the needs of the future church or school choir director. Beginning with a review of beat patterns, the subject matter will concern itself with principles of organization, conducting, interpretation, and

rehearsing techniques. Students will be acquainted with repertoire. (Taught only when there is sufficient demand) (Prerequisite: Music 122).

Mu 313 History of Music *Three credits*
A study of the basic styles of Western music from antiquity to contemporary times. Included will be research on trends in music. Recordings will be used extensively. (Taught only when there is sufficient demand.)

Music-Applied
The college's ensembles are designed to contribute to the maturation of each member's ministry and to his social and cultural refinement. All who qualify for membership in any of the following are required to maintain a satisfactory record of conduct, attendance, and scholastic achievement for continuance with the group. Auditions are held principally during September and January.

Evangelaire Concert Choir *One-half credit each term*
This group of 25 selected singers, plus musicians, travel extensively for the purpose of ministry in music and promotion of the College. To qualify one must have and maintain a grade average of 1.75 or more. Membership is honorary and is limited to students who have completed one or more terms at VFCC. (Transfer students may be given special consideration.) The choir rehearses twice each week, for 2 hours each time.

Applied Music—Private Instruction
The following courses are given in private instruction. Each subject offers one-half credit towards graduation. The maximum total of applicable credits toward graduation is six. Thirteen half-hour lessons are offered and required. Grading is based on student accomplishment and practice time.

Organ
To qualify for organ instruction, students must pass a piano proficiency test. Lessons will consist primarily of studying sacred music—emphasizing technique, dynamics, and interpretation. Congregational accompaniment is stressed.

Piano
Lessons are offered for the beginner and the advanced piano student. Instruction includes the studying of classical compositions as well as hymn arrangements.

Other Instruments
Private lessons can also be arranged on woodwind, string or bass instruments.

Voice
All students desirous of taking voice lessons must have an interview with the vocal instructor prior to registration. Students in vocal music organizations will be granted preference in applying for lessons. Principles of good voice culture as well as selection of a good voice repertoire are stressed.

Physical Education
PE 171,181. *Two terms—each One credit*
Instructions and participation in team and individual sports, calisthenics and personal hygiene. Two terms are required unless a doctor's certificate exempts one for physical inability. Students having certification that they were in the military receive two credits in Physical Education.

Physical Science
Sc 313 Survey of Physical Sciences *Three credits*
The Christian view of the world in the light of scientific discovery is presented in this survey course. Units in physics, chemistry, astronomy, and geology are included. There is a Lab fee of five dollars for this course.

Sc 423 Biology *Three credits*
A survey of the biological structure and function of living things, including the important types of plants and animals. Emphasis is placed upon the human anatomy and physiology. There is a Lab fee of five dollars for this course.

Social Sciences
SS 113 Ancient History *Three credits*
A survey of Western Civilization from the appearance of man through the fall of Rome. Attention is given to the various forms of government that were adopted, and the contributions from each successive civilization are noted.

SS 123 Principles of Sociology *Three credits*
An introduction to the general principles governing the inter-relationships of individuals and groups: a study of the basic institutions of society and the forces determining their development.

SS 213,223 European History I, II *Two terms—each Three credits*
The religious, social, political, and intellectual institutions of western Europe are emphasized. The first term covers the period from the decline of Rome through the Reformation; the second term, the rise of modern Europe.

SS 243,413 U.S. History I,II *Two terms—each Three credits*
A survey of the political, social, and economic history of the United States. The first term covers the period from European colonization through the Civil War; the second term, the period from Reconstruction through the present day.

SS 343 Introduction to Psychology *Three credits*
An introduction to the basic concepts of human behavior, and to elementary principles of learning, motivation, emotion, personality, and individual differences.

SS 323 Social Problems *Three credits*
A study of crime, delinquency, broken homes, urbanization, minority groups, and other problems, and the role of the Christian worker in finding a solution. Each student engages in extensive study in one area. (Prerequisite: SS 123).

SS 453 Introduction to Philosophy *Three credits*
A systematic survey of the fundamental problems of philosophy, intended to familiarize the student with the method of abstract thinking. The relationship of these problems to the Christian frame of reference is stressed.

Division of Secretarial Administration

SA 213 Elementary Typewriting *Three credits*
This course presents the basic methods and develops fundamental skills in typewriting.

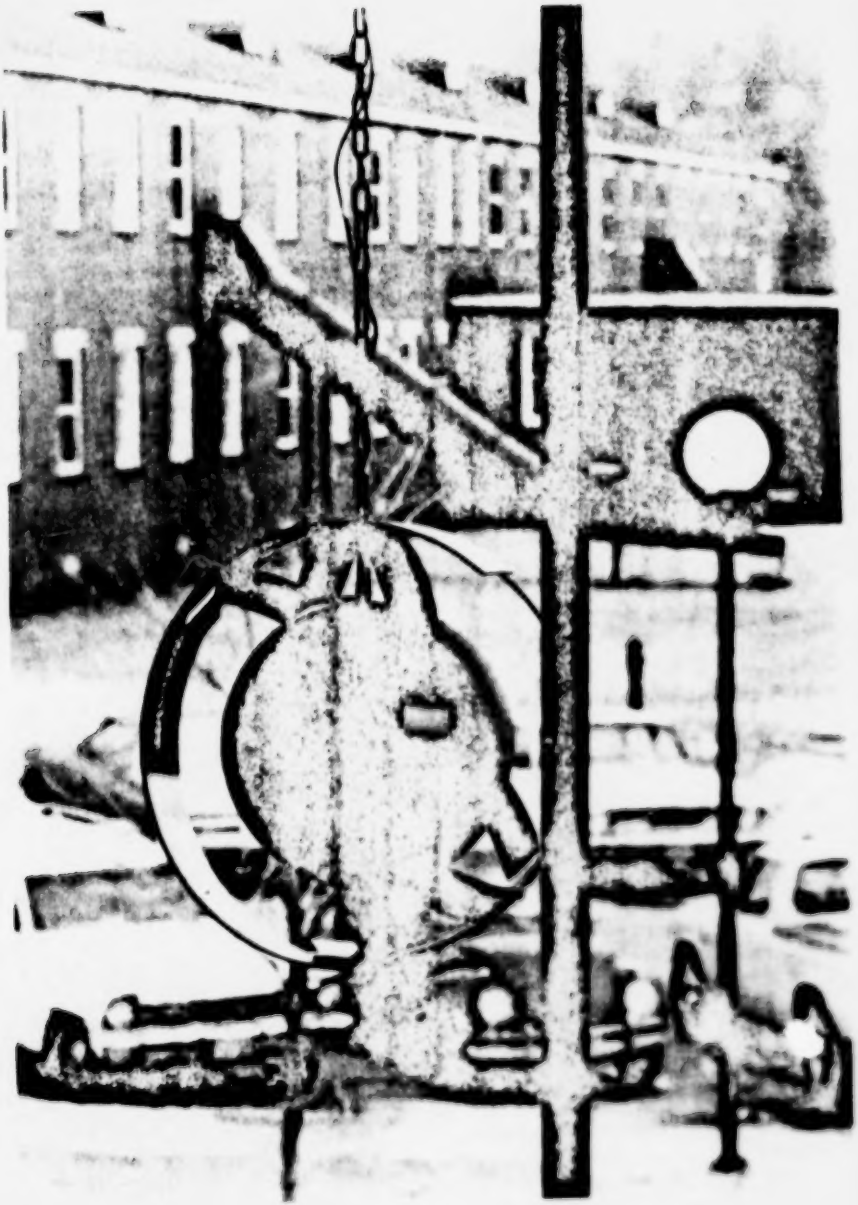
SA 222 Advanced Typewriting *Two credits*
A further development and refining of typewriting skills. (Pre-requisite SA 213)

SA 313 Elementary Shorthand *Three credits*
An introductory and fundamental course in Gregg Shorthand.

SA 322 Advanced Shorthand *Two credits*
An advanced course designed to develop speed in taking dictation and in producing accurate transcripts, with emphasis placed upon the mechanics of grammar, spelling and proper business letter forms.

SA 413 Elementary Accounting *Three credits*
The basic elements needed for proper bookkeeping are covered.

SA 423 Advanced Accounting *Three credits*
An over-view is made of partnerships, corporations, assets and liabilities, reserves and stocks. Particular emphasis is placed upon the preparation of complete financial reports.



Faculty

HOBART E. GRAZIER (1954-62, 1964)
Bible, Theology, and Languages
B.A., University of Pittsburgh
Th.B., Central Bible College
Studied at Drury College
S.T.M., Faith Theological Seminary
Instructor in the Army, 4 years, 1942-46
Pastor, 4 years
Professor at Southern California College, 1962-64

ESTHER L. HARRUP (1976)
Diploma, Central Bible College
B.A., Immanuel Baptist College
M.A., Immanuel Baptist College
Studied at University of Virginia
Teacher—Arlington, Virginia—2 years
Assistant Pastor—8 years
Pastor's wife—38 years

A. REUBEN HARTWICK, *Dean of Students* (1969)
Bible, Theology, and History
B.A., Th.B., Central Bible College
B.D., Reformed Presbyterian Theological Seminary
M.A. Duquesne University
Pastor 17 years

ANDREW M. McDEARMID, *Academic Dean* (1975)
Missions
Diploma, Northeast Bible Institute
B.A., Central Bible College
M.S.Ed., Old Dominion University
B.Div., Serampore University
D.D., Southern Asia Bible College
Missionary to India 25 years
President of Southern Asia Bible College 13 years

BERNICE L. McDEARMID (1975)
English and Bible (General Sec. of Alumni)
Special Student, Northeast Bible Institute
Th.B., Southern Asia Bible College
M.Div., Southern Asia Bible College
Missionary to India—25 years
Professor at Southern Asia Bible College—12 years

LOREN J. Mc RAE (1975)
Missions
Diploma, Detroit Bible College
B.S., Valley Forge Christian College
M.A. candidate, Villanova University
Studied at Assemblies of God Graduate School
Teacher at Community School of the Bible (1957-58)
Missionary to Thailand—16 years
President of Thailand Bible College—2 years

ROBERT E. OTT (1967)
History and Sociology
A.B., Taylor University
M.S., State University College at Fredonia, New York
Graduate work at Cornell University, Ithaca, New York
Pastor, 12 years
Teacher in public secondary schools, 13½ years

EDWARD B. REARDON (1971)
Music
Mus.B., Oberlin College
Studied in Germany under Fulbright Scholarship
Mus.M., Eastman School of Music
D.M.A. candidate, at Eastman School of Music

JURIS V. RENESLACIS, Registrar & Director of Admissions (1975)
Pastoral Theology, Bible and Theology
B.S., Northeast Bible College
B.S., United Wesleyan College
Th.B., United Wesleyan College
M.Div., Moravian Theological Seminary
Th.M., Princeton Theological Seminary
Pastor—14 years

DORSEY REYNOLDS (1964)
Librarian
B.A., Central Bible College
M.S. in I.S., Drexel University
Public Library work, 1956-64

CHESTER C. ROBERSON (1962)
Bible, Theology, and Philosophy
Diploma, South-Eastern Bible College
B.A., Florida Southern College
M.Ed., University of Florida
U.S. Army officer, World War II
Pastor
Public School teacher
Classwork complete on Ph.D. at Lehigh University
Teacher at South-Eastern Bible College, 1960-62

BERNARD ROSSIER (1976)
New Testament and Languages
B.S., Northeast Bible College
M.A., Villanova University
Ed.S. candidate, Arizona State University
Pastor—10 years
Teacher at American Indian Bible Institute—2 years

ALTA E. SHINER, *Director of Child Evangelism* (1962)
Christian Education, English and Psychology
B.S., Northeast Bible College
M.A., Villanova University
Co-Pastor
Christian Education Director

ROBERT E. TOURVILLE (1961-64, 1967)
Bible
A.B. in Education, Wheaton College
A.B., Th.B., in Bible and Theology, Central Bible College
Studied at Drury College
Studied at Faith Theological Seminary
M.A., Washington University
Pastor, evangelist, 12 years
Principal, teacher in public schools, 8 years

CLAIRE M. WATKINS, *Dean of Women* (1969)
English
B.S., Bloomsburg State College
M.Ed., Bloomsburg State College
Teacher in public school, 5 years

EZRA B. WATKINS (1970-71, 1976)
Music
Diploma, Northeast Bible Institute
B.M., Houghton College
M.M., Temple University
Studied at University of Michigan
Teacher at London College of Bible and Missions
Certified Public School Music Teacher

SPECIAL INSTRUCTORS

BERNICE DOERSOM (1962)
Physical Education
Diploma, Central Bible College
B.S., Northeast Bible College
Graduate work, Millersville State Teachers College
Graduate work, West Chester State Teachers College
Penn State University

BENJAMIN L. NASE, D.D.S. (1967-70, 1971)
Science
B.A., Goshen College
D.D.S., Case Western Reserve University
Private Dental Practice, 1959-

RUTH AVA PARKER (1967-8, 1976)
Piano
Studied in New York City with Carl Friedberg and Victor Wittgenstein
Studied in Boston with Miklos Schualb
Piano teacher, South End Music Centre, Boston—2 years
Maintained private piano studio, Augusta, Maine—9 years
Taught piano and English, NBC, 1967-68

MAE WINT (1976)
Piano and Organ
Studied with Rev. Robert Krempels
Maintained private music studio—14 years
Teacher for Fulton Piano and Organ Co.
Church Music Director and Musician—18 years
Radio and TV Musician—5 years

Calendar for the 1977-78 College Year

FALL TERM		
Aug. 27	Saturday	Arrival for dorm students
Aug. 27	Saturday	New student/parent reception at 5:00 p.m.
Aug. 28	Sunday	Worship in chapel at 10:30 a.m.
Aug. 29 & 30	Monday & Tuesday	9:00 a.m.—Orientation for all new students on each day
Aug. 30	Tuesday	Enrollment for upperclassmen: 9:00 a.m.—Seniors 10:30 a.m.—Juniors 1:00 p.m.—Sophomores
Aug. 31	Wednesday	Enrollment for all new and transfer students at 9:00 a.m.
Sept. 1	Thursday	Classes begin at 7:45 a.m.
Nov. 23	Wednesday	Thanksgiving vacation begins at 3:00 p.m.
Nov. 27	Sunday	Residence halls open: first meal—supper at 5:00 p.m.
Nov. 28	Monday	Classes resume at 7:45 a.m.
Dec. 13-16		Final Examinations
Dec. 16	Friday	Christmas vacation begins at 3:00 p.m.
SPRING TERM		
Jan. 2	Monday	Residence halls open: first meal—supper at 5:00 p.m.
Jan. 3	Tuesday	9:00 a.m.—Orientation for all new students
Jan. 3	Tuesday	Enrollment for upperclassmen: 9:00 a.m.—Seniors 10:30 a.m.—Juniors 1:00 p.m.—Sophomores
Jan. 4	Wednesday	Enrollment for all freshman and transfer students at 9:00 a.m.
Jan. 5	Thursday	Classes begin at 7:45 a.m.
Mar. 22	Wednesday	Easter vacation begins at 3:00 p.m.
Mar. 27	Monday	Residence halls open: first meal—supper at 5:00 p.m.
Mar. 28	Tuesday	Classes resume at 7:45 a.m.
Apr. 22	Saturday	Class night program
Apr. 24-28		Final Examinations
Apr. 27	Thursday	Commencement musicale
Apr. 28	Friday	Baccalaureate service
Apr. 29	Saturday	Commencement service

* The Early Hebrew History course is **required** for all freshmen and others who have not taken it.

MAY TERM
May 1-May 26

Early Hebrew History* (3)
European History II (3)
Contemporary Theology (3)

SUMMER SESSION:
JUNE TERM
May 30-June 24

Introduction to Philosophy (3)
Biblical Archaeology (3)
Leadership Seminar (2)
Synoptic Gospels (2)

DATES for SCHEDULE CHANGES and WITHDRAWALS

FALL TERM	Classification
Sept. 1 (Thurs.)—Sept. 10 (Sat.)	Add/Drop
Sept. 11 (Sun.)—Oct. 15 (Sat.)	W
Oct. 16 (Sun.)—Nov. 19 (Sat.)	WP/WF
Nov. 20 (Sun.)—Dec. 16 (Fri.)	WF
SPRING TERM	
Jan. 5 (Thurs.)—Jan. 14 (Sat.)	Add/Drop
Jan. 15 (Sun.)—Feb. 18 (Sat.)	W
Feb. 19 (Sun.)—Mar. 25 (Sat.)	WP/WF
Mar. 26 (Sun.)—Apr. 28 (Fri.)	WF
MAY TERM	
May 1 (Mon.)—May 2 (Tues.)	Add/Drop
May 3 (Wed.)—May 9 (Tues.)	W
May 10 (Wed.)—May 16 (Tues.)	WP/WF
May 17 (Wed.)—May 26 (Fri.)	WF
JUNE TERM	
May 30 (Tues.)—May 31 (Wed.)	Add/Drop
June 1 (Thurs.)—June 7 (Wed.)	W
June 8 (Thurs.)—June 14 (Wed.)	WP/WF
June 15 (Thurs.)—June 24 (Sat.)	WF

Calendar for the 1978-79 College Year

FALL TERM

Aug. 26	Saturday	Arrival for dorm students
Aug. 26	Saturday	New student/parent reception at 5:00 p.m.
Aug. 27	Sunday	Worship in chapel at 10:30 a.m.
Aug. 28 & 29	Monday & Tuesday	9:00 a.m.—Orientation for all new students on each day
Aug. 29	Tuesday	Enrollment for upperclassmen: 9:00 a.m.—Seniors 10:30 a.m.—Juniors 1:00 p.m.—Sophomores
Aug. 30	Wednesday	Enrollment for all new and transfer students at 9:00 a.m.
Aug. 31	Thursday	Classes begin at 7:45 a.m.
Nov. 22	Wednesday	Thanksgiving vacation begins at 3:00 p.m.
Nov. 26	Sunday	Residence halls open: first meal—supper at 5:00 p.m.
Nov. 27	Monday	Classes resume at 7:45 a.m.
Dec. 12-15		Final Examinations
Dec. 15	Friday	Christmas vacation begins at 3:00 p.m.

SPRING TERM

Jan. 3	Wednesday	Residence halls open: first meal—supper at 5:00 p.m.
Jan. 4	Thursday	9:00 a.m.—Orientation for all new students
Jan. 4	Thursday	Enrollment for upperclassmen: 9:00 a.m.—Seniors 10:30 a.m.—Juniors 1:00 p.m.—Sophomores
Jan. 5	Friday	Enrollment for all freshman and transfer students at 9:00 a.m.
Jan. 8	Monday	Classes begin at 7:45 a.m.
Apr. 11	Wednesday	Easter vacation begins at 3:00 p.m.
Apr. 16	Monday	Residence halls open: first meal—supper at 5:00 p.m.
Apr. 17	Tuesday	Classes resume at 7:45 a.m.
Apr. 21	Saturday	Class night program
Apr. 23-27		Final Examinations
Apr. 26	Thursday	Commencement musicale
Apr. 27	Friday	Baccalaureate service
Apr. 28	Saturday	Commencement service

MAY TERM
Apr. 30-May 25

Early Hebrew History* (3)
European History II (3)
Greek Exegesis (3)
Contemporary Theology (3)

SUMMER SESSION:**
JUNE TERM
May 29-June 23

Introduction to Philosophy (3)
Biblical Archaeology (3)
Leadership Seminar (2)
Synoptic Gospels (2)

* The Early Hebrew History course is **required** for all freshmen and others who have not taken it.
** Additional study opportunities are being continually planned and will be announced as they are developed.

DATES for SCHEDULE CHANGES and WITHDRAWALS

FALL TERM	Classification
Aug. 31 (Thurs.)—Sept. 9 (Sat.)	Add/Drop
Sept. 10 (Sun.)—Oct. 14 (Sat.)	W
Oct. 15 (Sun.)—Nov. 18 (Sat.)	WP/WF
Nov. 19 (Sun.)—Dec. 15 (Fri.)	WF
SPRING TERM	
Jan. 8 (Mon.)—Jan. 17 (Wed.)	Add/Drop
Jan. 18 (Thurs.)—Feb. 21 (Wed.)	W
Feb. 22 (Thurs.)—Mar. 28 (Wed.)	WP/WF
Mar. 29 (Thurs.)—Apr. 27 (Fri.)	WF
MAY TERM	
Apr. 30 (Mon.)—May 1 (Tues.)	Add/Drop
May 2 (Wed.)—May 8 (Tues.)	W
May 9 (Wed.)—May 15 (Tues.)	WP/WF
May 16 (Wed.)—May 25 (Fri.)	WF
JUNE TERM	
May 29 (Tues.)—May 30 (Wed.)	Add/Drop
May 31 (Thurs.)—June 6 (Wed.)	W
June 7 (Thurs.)—June 13 (Wed.)	WP/WF
June 14 (Thurs.)—June 23 (Sat.)	WF

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Mr. Charles A. Roberts ..... Somers, CT
Rev. Anthony DiQuattro ..... Belleville, NJ
Rev. R.D.E. Smith ..... Binghampton, NY

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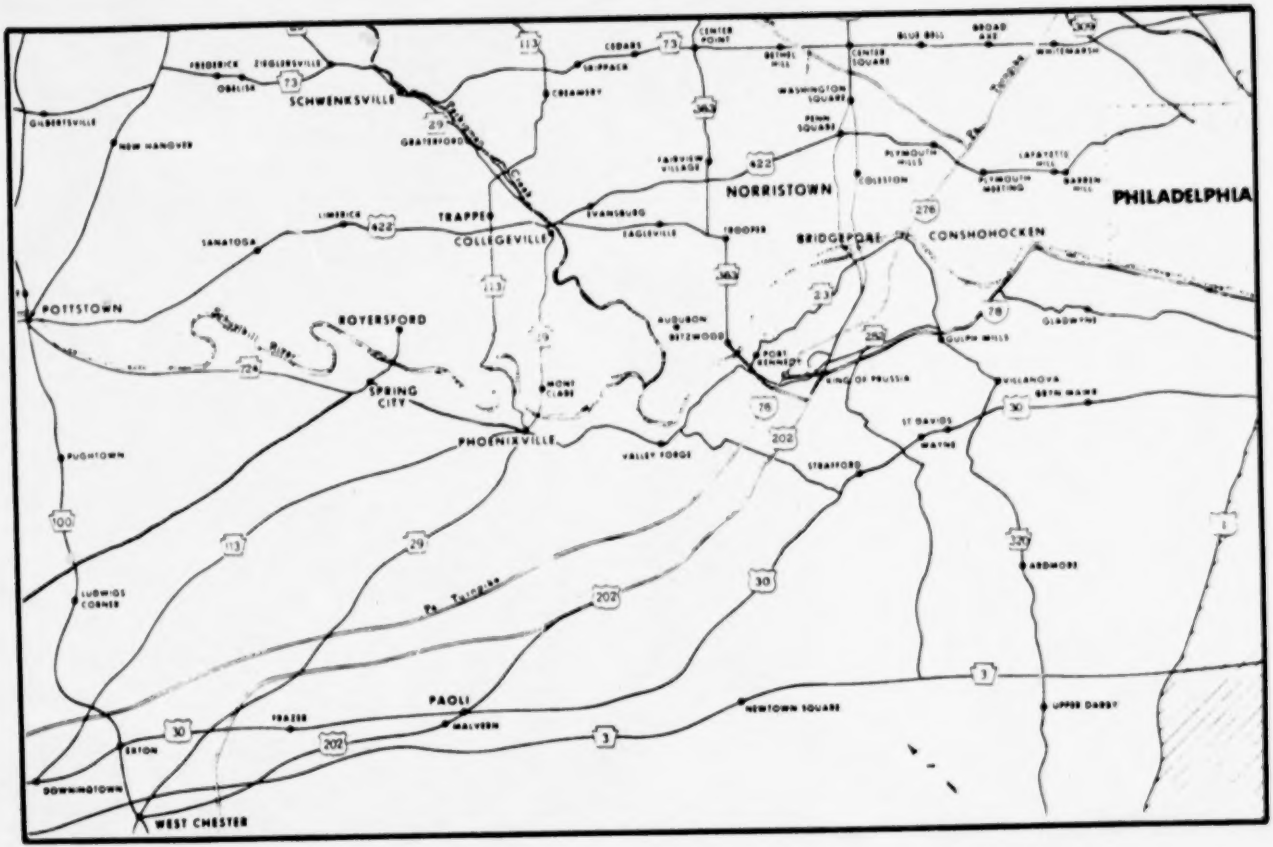
SCHWENKSVILLE
NORRISTOWN
PHILADELPHIA
CONSHOHOCKEN
BRIDGEPORT
COLLEGEVILLE
TRAPPE
POTTSTOWN
ROYERSFORD
SPRING CITY
PHOENIXVILLE
VALLEY FORGE
PAOLI
MALVERN
WEST CHESTER
DOWNINGTOWN
EXTON
NEWTOWN SQUARE
UPPER DARBY
ARDMORE
WAYNE
ST DAVIDS
VILLANOVA
KING OF PRUSSIA
FORT WASHINGTON
AUDUBON
BETZWOOD
EVANSBURG
EAGLEVILLE
TROOPER
LIMERICK
SANATOGA
GRATERFORD
NEW HANOVER
GILBERTSVILLE
FREDERICK
ZIEGLERSVILLE
OBELISK
CEDARS
SUPPLEE
CREAMERY
CENTER POINT
BETHEL HILL
CENTER SQUARE
WASHINGTON SQUARE
PENN SQUARE
FAIRVIEW VILLAGE
COLLEGEVILLE
BLUE BELL
BROAD AXE
WHITEMARSH
PLYMOUTH HILLS
PLYMOUTH MEETING
LAFAYETTE HILL
BARREN HILL
GLADWYNE
GULPH MILLS
BRYN MAWR
LUDWIGS CORNER
PUGHTOWN
FRAZER
STRAFFORD
Schuylkill River
Pa Turnpike
Turnpike
422
202
30
76
276
476
100
113
29
73
363
23
252
320
1

PLEASE DO NOT WRITE IN THIS SPACE

Date received
Date approved
Fee received
Term applied for
Dormitory ( ) Day ( )
High school grad
Transfer
Remarks:

Valley Forge Christian College
P.O. Box 810
Charlestown Road
Phoenixville, PA. 19460

APPLICATION for ADMISSION
(Send To: Admissions Department)

Please enclose $25.00 deposit and photograph. Please type or print your answer to every question carefully and candidly.

*Please paste in this space a recent clear snapshot or photograph of yourself.

PERSONAL DATA

Full name ..... Phone number ..... Area Code .....
Permanent address ..... Zip Code .....
Present address ..... Effective dates .....
Your age ..... Date of birth ..... Place of birth .....
Height ..... Weight ..... Color of hair ..... Color of eyes ..... Sex: M ( ) F ( )
*Ancestry ..... Race ..... Country of citizenship .....
Marital status: Single ( ) Going steady ( ) Engaged ( ) Married ( ) Widow(er) ( )
Separated ( ) Divorced ( ) Divorced and remarried ( )
If married: Date married ..... Was your spouse divorced before you married her (him)? .....
Number and ages of children .....
Full name of spouse .....
Social Security number .....
Military status: .....

**Neither picture nor race will affect our decision on acceptance. A picture is needed for identification purposes and race is needed for statistics.*

FAMILY DATA

Father's name ..... His occupation .....

His address ..... Phone Number .....

Mother's name ..... Her occupation .....

Her address ..... Phone Number .....

Name of guardian, if other than parents ..... Occupation .....

Address ..... Phone Number .....

Relatives who have attended VFCC. (Give name and relation) .....

.....

.....

CHRISTIAN EXPERIENCE AND OBJECTIVES

When and where were you converted? .....

Have you backslidden since being converted? .....

If so, when were you reclaimed? .....

Have you been baptized in the Holy Spirit according to Acts 2:4? ..... When? .....

If not, describe your present attitude: earnestly seeking ( ) passively interested ( ) not informed about this ( )

What church do you attend? ..... Are you a member? .....

Address .....

What Christian work have you done? .....

Do you have any vocal or instrumental talent? .....

What? .....

Accommodations preferred: Dormitory room (single students) ( ) Off campus ( ) On Campus Apartment (married students)
One-Bedroom ( )
Two-Bedroom ( )

Program preferred: Three-year ( ) Four-year ( ) special ( )

Concentration preferred: Ministerial ( ) Missionary ( ) Christian Education ( )

When do you wish to enter? .....

If accepted, will you, with the help of the Lord, sincerely endeavor to abide by all the regulations of the school and submit yourself to those in authority? .....

SCHOLASTIC AND VOCATIONAL DATA

Last high school attended .....
name location

Did you graduate? ..... When? ..... If not, what is the last grade level you completed?
below 9th grade ..... 9 ..... 10 ..... 11 .....

If still attending high school, give expected date of graduation .....

List below all colleges (or other post-high school institutions) attended:

Name	Location	Dates attended	Course	Degree (if any)

Have you ever been dismissed from school? ..... If so, explain on separate sheet.

What vocational experience have you had? .....

Give the name and address of your most recent employer .....

Do you have a hobby? .....

HEALTH DATA

Do you have any health problems or physical disabilities? .....

If so, please describe .....

Do you use alcoholic beverages, tobacco, or drugs? .....

If yes, which? .....

ADMISSIONS FILE DATA

References: List clearly names and complete mailing addresses of three references as follows.

	Church	Name	Address
Pastor			
Christian Leader			
Christian Leader			

Transcripts: Please ask the proper authority in the high school from which you graduated and any college level school you attended to send an official transcript of your record to the Director of Admissions, Valley Forge Christian College, P.O. Box 810, Phoenixville, PA. 19460. Indicate here the date on which such transcript(s) was requested .....

SUPPLEMENTARY STATEMENT

Do you believe God has called you to a definite Christian work? .....

If so, please explain your understanding of your call. Perhaps the following questions will help you to organize your thinking. Feel free to include other aspects.

When and under what circumstances did you first know definitely that you were called by God to this ministry? (For example, did your call come through immediate awareness, by means of a portion of Scripture, through someone's words of counsel or exhortation, in a service in which others were consecrating themselves to the Lord, or by other means? Have you experienced anything that you have interpreted as a confirmation of your call? Have people close to you greatly encouraged (or discouraged) you to go ahead and fulfill your call? In either case (positive or negative), what has been your reaction?

If not called to a specific ministry, what are your plans for the future and reasons for attending VFCC?

If you feel definitely led to attend Bible college, please explain your understanding of God's leading.
Since a number of people feel they have no call but would like to attend Bible college, it may be that you would want to so state.

Date .....

Signature .....

Write supplementary statement on a separate sheet of paper.

Admissions Department
Valley Forge Christian College
P.O. Box 810
Phoenixville, PA 19460

REFERENCE BY CHRISTIAN LEADER

To be completed by a leader in your church and mailed directly by him/her to the Admissions Office.

Name of applicant _____

Address of applicant _____

The above named is applying for admission to Valley Forge Christian College. Your cooperation in completing this reference form will be greatly appreciated. Frank comments will be appreciated.

Please check the following:

	unknown	superior	above average	average	below average	inferior	COMMENTS (if any)
Mental ability							
Motivation							
Emotional stability							
Initiative							
Copes with stress							
Concern for others							
Leadership							
Accepts criticism							
Cooperation							
Attitude to authority							
Social adaptability							
Personal appearance							
Christian life							
Reliability							
Integrity							

	Yes	No
Do you believe the applicant is a commited Christian?		
Has the applicant, in your judgment, fitness and aptitude for college?		
Do you consider applicant emotionally qualified for full-time Christian service?		
To your knowledge, does he smoke?		
drink?		
use drugs?		
Would you recommend the applicant's acceptance at VFCC?		

These observations are based on an acquaintance over a period of _____ years.

In what form of Christian work has applicant engaged and with what success? Give as full a statement as possible. _____

_____

_____

_____

NOTE: On the reverse side please give a frank appraisal of the applicant's personal character.

Your name _____

Name of church _____ Denomination _____

Position in church _____ Occupation or profession _____

Signed _____ Date _____

Address _____
street city state zip code

Admissions Department
Valley Forge Christian College
P.O. Box 810
Phoenixville, PA 19460

REFERENCE BY PASTOR

To be completed by your pastor and mailed directly by him to the Admissions Office.

Name of applicant _____

Address of applicant _____

The above named is applying for admission to Valley Forge Christian College. Your cooperation in completing this reference form will be greatly appreciated. Frank comments will be appreciated.

Please check the following:

	unknown	superior	above average	average	below average	inferior	COMMENTS (if any)
Mental ability							
Motivation							
Emotional stability							
Initiative							
Copes with stress							
Concern for others							
Leadership							
Accepts criticism							
Cooperation							
Attitude to authority							
Social adaptability							
Personal appearance							
Christian life							
Reliability							
Integrity							

	Yes	No
Do you believe the applicant is a commited Christian?		
Has the applicant, in your judgment, fitness and aptitude for college?		
Do you consider applicant emotionally qualified for full-time Christian service?		
To your knowledge, does he smoke?		
drink?		
use drugs?		
Would you recommend the applicant's acceptance at VFCC?		

These observations are based on an acquaintance over a period of _____years.

In what form of Christian work has applicant engaged and with what success? Give as full a statement as possible. _____

_____

_____

_____

NOTE: On the reverse side please give a frank appraisal of the applicant's personal character.

EXHIBIT C

Northeast Bible College

Report upon examination of accounts and financial records for the year ended June 30, 1976.

NORTHEAST BIBLE COLLEGE

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Balance Sheet- Media Fund

Balance Sheet — Loan Fund

Balance Sheet — Endowment Fund

Balance Sheet — Layman's Council Fund

Statement of Income and Expenses — Current Fund

Budget Comparison of Income — Current Fund

Budget Comparison of Expenses — Current Fund

Statement of Income and Expenses — Plant Fund

Statement of Cash Receipts and Disbursements — Plant Fund

Notes to Financial Statement

DETWEILER, LIPKIN & ASSOCIATES
64 N. COUNTY LINE ROAD, SOUDERTON, PA 18964

October 18, 1976

To The Board of Regents
Northeast Bible College
Green Lane, Pa. 18054

We have examined the accounts and financial records of the Northeast Bible College for the year ended June 30, 1976. In connection therewith, we examined the records of receipts and disbursements as maintained by the Business Office. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Within the scope of audit we did not and could not determine the character of services rendered for which payment had been made nor could we determine the character, proper prices, or quality of materials supplied for which payment had been made. These details were necessarily covered by the approval of such items prior to payment. Revenues and receipts were established and verified on a test basis as to source and amount only insofar as the local records permitted.

Cash in Bank: Cash in bank was confirmed by written confirmations with the various banking institutions where checking accounts, savings accounts, and certificates of deposit are maintained.

Accounts Receivable

Accounts Receivable balances were reviewed and found to be in agreement between the control and subsidiary accounts. No written confirmation was made on the accounts receivable and thus no opinion can be expressed on their correctness.

Inventory

The annual physical inventory was taken and priced by the Business Office. We made no attempt to verify this evaluation

either by count or value and therefore we cannot render an opinion as to its value.

Plant, Property, and Equipment

For complete details see Notes 1-3 on page 16.

In accordance with practices followed by non-profit educational institutions, no provision has been made for depreciation of buildings, equipment, or building improvements, all of which constitute educational plant.

Investments

The values of investments are recorded by various methods. Severance Tool Industries is recorded at the value at the date of donation. A. & J. Industries is recorded at par value since we were unable to determine the value at either the date of donation or the date of the report. American Telephone and Telegraph is recorded at the stock value at June 30, 1971 in the Current Fund and at cost in the Endowment Fund and Plant Fund.

Notes and Mortgage Payable

Amounts owing to banking institutions were reviewed and confirmed by written confirmation as of June 30, 1976.

In our opinion, except as noted in the preceding paragraphs on Accounts Receivable, Inventory, and Plant, Property and Equipment, the accompanying financial statements present fairly the financial position of the Northeast Bible College at June 30, 1976 and the income and expenses for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of non-profit educational institutions.

/s/ DETWEILER, LIPKIN AND ASSOCIATES
Certified Public Accoutants

NORTHEAST BIBLE COLLEGE
BALANCE SHEET
CURRENT AND PLANT FUNDS
JUNE 30, 1976

ASSETS

	Total	Current Fund	Plant Fund
Current Assets:			
Cash on Hand	$ 600	$ 600	$ 0
Cash in Bank — Union National Bank and Trust Company	21,246	20,071	1,175
Savings Accounts — Red Hill Savings and Loan Association — 5¼% to 7½%	160,178	119,799	40,379
Accounts Receivable	54,605	54,605	0
Inventory	35,169	35,169	0
Prepaid Hospitalization Insurance	1,171	1,171	0
Total Current Assets	272,969	231,415	41,554
Plant, Property, and Equipment (Notes 1,2,3 and 4, Pages 16 and 17):			
Land	70,819	0	70,819
Buildings	832,865	0	832,865
Furniture, Fixtures, and Equipment	251,519	0	251,519
Building #4 Under Construction	3,859	0	3,859
Library — Cataloged Books	183,940	0	183,940

Building Improvements (Cost)	68,860	0	68,860
Total Plant, Property, and Equipment	1,411,862	0	1,411,862
Other Assets:			
Investments — Common Stock:			
Severance Tool Industries, 2,100 Shares	4,725	4,725	0
A. & J. Industries, 115 Shares	215	215	0
American Telephone and Telegraph			
—894 Shares	41,012	41,012	0
— 22 Shares	1,100	0	1,100
Investment — United Student Aid Fund	3,000	3,000	0
Total Other Assets	50,052	48,952	1,100
TOTAL ASSETS	$1,734,883	$280,367	$1,454,516

The accompanying notes are an integral part of the financial statements.

NORTHEAST BIBLE COLLEGE
BALANCE SHEET
CURRENT AND PLANT FUNDS
JUNE 30, 1976

LIABILITIES

	Total	Current Fund	Plant Fund
Current Liabilities:			
Accounts Payable	$ 10,984	$ 10,984	$ 0
Notes Payable — Union National Bank and Trust Company — 8%	49,445	24,445	25,000
Notes Payable — Individuals	53,968	32,008	21,960
Mortgage Payable — Merchants National Bank of Allentown — 6%	7,800	0	7,800
Due to Other Funds — Net	7,480	2,875	4,605
Reserve Accounts:			
Accrued and Withheld Payroll Taxes	1,830	1,830	0
Contingency Funds	2,102	2,102	0
Government Aid for Students	2,061	2,061	0
Advance Room Reservations and Deposits	2,862	2,862	0
Advance Registration Fees	5,046	5,046	0
Advance Tuition Payments	15,724	15,724	0
Pa. Sales Tax Collected	187	187	0
Restricted Funds	15,776	0	15,776

Scholarships	369	369	0
Choir Robes	1,059	1,059	0
Minister's Life and Benefit Association	859	859	0
Bible Land Tours	599	599	0
Student Assistance	9,091	9,091	0
Total Current Liabilities	187,242	112,101	75,141
Long Term Debt:			
Mortgage Payable — Merchants National Bank of Allentown — 6%	28,840	0	28,840
EQUITY			
Fund Balances, June 30, 1976 — Page 5	1,518,801	168,266	1,350,535
TOTAL LIABILITIES AND EQUITY	$1,734,883	$280,367	$1,454,516

NORTHEAST BIBLE COLLEGE
SCHEDULE OF FUND BALANCES
CURRENT AND PLANT FUNDS
FOR THE YEAR ENDED JUNE 30, 1976

	Total	Current Fund	Plant Fund
Fund Balances, July 1, 1975	$1,383,366	$127,033	$1,256,333
Changes in Fund Balances:			
Excess of Income Over Expenses	193,433	93,096	100,337
Library — Additional Cataloged Books	17,189	0	17,189
Transfer of Tuition to Plant Fund	(51,863)	(51,863)	0
Transfer of Layman's Council Fund Equity	(23,324)	0	(23,324)
Net Additions to Fund Balances	135,435	41,233	94,202
FUND BALANCES, JUNE 30, 1976 — Page 4	$1,518,801	$168,266	$1,350,535

The accompanying notes are an integral part of the financial statements.

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NORTHEAST BIBLE COLLEGE
BALANCE SHEET
AGENCY FUND
JUNE 30, 1976

ASSETS

Current Assets:		
Cash in Bank — Union National Bank and Trust Company	$ 503	
Savings Account — Red Hill Savings and Loan Association	1,165	
Due from Other Funds — Net	4,219	
TOTAL ASSETS		$ 5,887

LIABILITIES

None	$ 0

EQUITY

Fund Balances:	
Vision	$ 253
Athletics	(1,618)
Athletics — Uniforms	1,165
Weekend Activities	746
Flower Fund	85
Student Council	258
Class of 1974-1975	39

Class of 1975-1976	1	
Class of 1976-1977	665	
Class of 1977-1978	812	
Class of 1978-1979	527	
Missionary Society	1,370	
Clubs	1,018	
Surplus	155	
Transportation	411	
Total Fund Balances		5,887
TOTAL LIABILITIES AND EQUITY		$ 5,887

The accompanying notes are an integral part of the financial statements.

NORTHEAST BIBLE COLLEGE
BALANCE SHEET
MEDIA FUND
JUNE 30, 1976

ASSETS

Current Assets:		
Cash in Bank — Union National Bank and Trust Company	$ 334	
Plant, Property and Equipment:		
Furniture, Fixtures and Equipment	3,935	
TOTAL ASSETS		$4,269

LIABILITIES

Due to Other Funds	$ 18

EQUITY

Fund Balance	4,251
TOTAL LIABILITIES AND EQUITY	$4,269

The accompanying notes are an integral part of the financial statements.

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NORTHEAST BIBLE COLLEGE
BALANCE SHEET
LOAN FUND
JUNE 30, 1976

ASSETS

Current Assets:			
Savings Accounts — Red Hill Savings and Loan Association		$8,099	
Notes Receivable:			
Lucille Garrison Loan Fund	$ 1,013		
Ministerial Student Revolving Loan Fund	14,611	15,624	
Due from Other Funds — Net		2,664	
TOTAL ASSETS			$26,387

LIABILITIES

None	$ 0

EQUITY

Fund Balances:			
Lucille Garrison Loan Fund:			
Principal		$ 2,346	
Interest		1,074	3,420

Ministerial Student Revolving Loan Fund:		
Principal	19,959	
Interest	3,008	22,967
TOTAL FUND BALANCES		26,387
TOTAL LIABILITIES AND EQUITY		$26,387

The accompanying notes are an integral part of the financial statements.

NORTHEAST BIBLE COLLEGE
BALANCE SHEET
ENDOWMENT FUND
JUNE 30, 1976

ASSETS

Current Assets:		
Savings Account — Red Hill Savings and Loan Association	$6,280	
Investments — 68.5 Shares United Funds, Inc.	1,134	
22 Shares — Common — American Telephone and Telegraph	1,100	
Due from Other Funds — Net	615	
TOTAL ASSETS		$9,129

LIABILITIES

None	$ 0

EQUITY

Fund Balances:		
Northeast Bible College Trust Fund:		
Principal	$3,227	
Interest	103	3,330

John A. Grazier Memorial Fund:		
Principal	1,276	
Interest	166	1,442
Krikor and Nebart Danielian Memorial Fund:		
Principal	3,000	
Interest	108	3,108
George E. Flower Memorial Fund		1,249
TOTAL FUND BALANCES		9,129
TOTAL LIABILITIES AND EQUITY		$9,129

The accompanying notes are an integral part of the financial statements.

NORTHEAST BIBLE COLLEGE
BALANCE SHEET
LAYMAN'S COUNCIL FUND
JUNE 30, 1976

ASSETS

Current Assets:		
Cash in Bank — Union National Bank and Trust Company	$516	
Savings Certificates — Red Hill Savings and Loan Association	24,181	
TOTAL ASSETS		$24,697

LIABILITIES

None	$ 0

EQUITY

Fund Balance, June 30, 1976	24,697
TOTAL LIABILITIES AND EQUITY	$24,697

The accompanying notes are an integral part of the financial statements.

NORTHEAST BIBLE COLLEGE
STATEMENT OF INCOME AND EXPENSE
CURRENT FUND
FOR THE YEAR ENDED JUNE 30, 1976

	Income	Expense	Income Over (Under) Expense
Education and General	$470,571	$526,680	$(56,109)
Student Aid	29,032	48,482	(19,450)
Auxiliary Enterprises:			
Dormitory	69,302	22,652	46,650
Housing	12,524	0	12,524
Cafeteria	166,988	131,678	35,310
Snack Shop & Vending Machine	6,146	4,660	1,486
Post Office	2,566	1,102	1,464
Bookstore	88,854	78,305	10,549
Laundry	7,377	2,562	4,815
Printing	957	9,020	(8,063)
Total Auxiliary Enterprises	354,714	249,979	104,735
Promotions:			
Tours	11,817	9,602	2,215
Five or More Offerings	66,346	1,439	64,907

Gifts and Offerings	20,076	0	20,076
Public Relations	0	13,841	(13,841)
Total Promotions	98,239	24,882	73,357
Interest	0	9,437	(9,437)
TOTAL INCOME AND EXPENSE FROM OPERATIONS—Page 5	$952,556	$859,460	$93,096

The accompanying notes are an integral part of the financial statements.

NORTHEAST BIBLE COLLEGE
BUDGET COMPARISON OF INCOME
CURRENT FUND
FOR THE YEAR ENDED JUNE 30, 1976

	Budget	Actual	Over (Under) Budget
Educational and General:			
Student Fees	$413,320	$447,211	$ 33,891
Interest	7,500	10,698	3,198
Miscellaneous Income	3,500	6,233	2,733
Christian Service and Child Evangelism	4,000	4,881	881
Extension Classes	400	1,548	1,148
Total Educational and General	428,720	470,571	41,851
Student Aid:			
Scholarships	5,000	10,273	5,273
Student Financial Aid	6,410	18,759	12,349
Total Student Aid	11,410	29,032	17,622
Auxiliary Enterprises:			
Dormitory	66,070	69,302	3,232
Housing	10,300	12,524	2,224
Cafeteria	154,000	166,988	12,988
Snack Shop and Vending Machines	4,500	6,146	1,646

Post Office	2,000	2,566	566
Book Store	34,650	88,854	54,204
Laundry	6,550	7,377	827
Printing	400	957	557
Total Auxiliary Enterprises	278,470	354,714	76,244
Promotions:			
Tours	8,700	11,817	3,117
Five or More Offerings	60,000	66,346	6,346
Gifts and Offerings	18,700	20,076	1,376
Total Promotions	87,400	98,239	10,839
TOTAL INCOME FROM OPERATIONS — Page 11	$806,000	$952,556	$146,556

The accompanying notes are an integral part of the financial statements.

NORTHEAST BIBLE COLLEGE
BUDGET COMPARISON OF EXPENSES
CURRENT FUND
FOR THE YEAR ENDED JUNE 30, 1976

	Budget	Actual	Over (Under) Budget
Educational and General:			
President	$ 31,705	$ 25,368	$(6,337)
Assistant to the President	12,530	11,679	(851)
Academic Dean	18,425	16,894	(1,531)
Deans of Men and Women	18,045	17,994	(51)
Registrar and Admissions	24,620	24,899	279
Business Office	49,100	53,431	4,331
Instructional	103,900	99,526	(4,374)
Library	29,295	29,672	377
General Operative	174,777	134,873	(39,904)
Extension Classes	400	11	(389)
Christian Service and Child Evangelism	17,500	17,575	75
Dispensary	1,850	1,915	65
Building and Ground Maintenance	49,675	64,246	14,571
Housekeeping	12,380	15,301	2,921
Gymnasium Building	1,000	900	(100)
Sewage Treatment Plant	5,300	8,572	3,272
Stewardship Department	4,000	3,600	(400)
Department of Education — Assemblies of God	0	224	224
Total Educational and General	554,502	526,680	(27,822)

Student Aid:			
Scholarships	23,500	47,227	23,727
Student Financial Aid	1,150	1,255	105
Total Student Aid	24,650	48,482	23,832
Auxiliary Enterprises:			
Dormitories	23,678	22,652	(1,026)
Cafeteria	109,100	131,678	22,578
Snack Shop and Vending Machines	5,200	4,660	(540)
Post Office	1,300	1,102	(198)
Book Store	41,975	78,305	36,330
Laundry	4,200	2,562	(1,638)
Print Shop	7,225	9,020	1,795
Total Auxiliary Enterprises	192,678	249,979	57,301
Promotions:			
Tours	6,850	9,602	2,752
Five or More	2,600	1,439	(1,161)
Public Relations	10,700	13,841	3,141
Total Promotions	20,150	24,882	4,732
Interest	14,000	9,437	(4,563)
TOTAL EXPENSES FROM OPERATIONS — Page 11	$805,980	$859,460	$ 53,480

The accompanying notes are an integral part of the financial statements.

NORTHEAST BIBLE COLLEGE
STATEMENT OF INCOME AND EXPENSES
PLANT FUND
FOR THE YEAR ENDED JUNE 30, 1976

Income:		
Interest	$ 938	
Tuition Transferred from Current Fund	51,863	
Maranatha Park — For Treatment Plant	1,425	
Cash Contributions — Churches and Individuals	44,655	
Non-Cash Contributions	1,456	
Total Income		$100,337
Expenses		0
NET INCOME OVER EXPENSES — Page 5		$100,337

The accompanying notes are an integral part of the financial statements.

NORTHEAST BIBLE COLLEGE
STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
PLANT FUND
FOR THE YEAR ENDED JUNE 30, 1976

Cash Balance, July 1, 1975		$ 42,181
Receipts:		
Contributions — Churches and Individuals	$47,277	
Interest on Savings	2,310	
Tuition Transferred from Current Fund	51,862	
Maranatha Park — Treatment Plant	1,425	
Transferred from Current Fund	12,500	
Personal Loans	404	
Total Receipts		115,778
Total Cash Available		157,959
Disbursements:		
Mortgage Payments — Merchants National Bank	$ 7,336	
Building #4 Under Construction	2,521	
Improvements to Buildings and Grounds	7,764	
Furniture, Fixtures, and Equipment	46,587	

Transferred to Current Fund	27,500	
Transferred to Layman's Council Fund	24,697	
Total Disbursements		116,405
Cash Balance, June 30, 1976		$ 41,554

The accompanying notes are an integral part of the financial statements.

NORTHEAST BIBLE COLLEGE
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 1976

Note 1—Land — Due to incomplete records of earlier years, a portion of the value assigned to land includes an appraisal amount of $49,450 as of June 30, 1973, for land held by the college as of that date. This appraisal value is an average of appraisals by two registered real estate brokers independent of Northeast Bible College. The difference between the above appraisal amount and the cost assigned to land as of June 30, 1976 reflects the actual costs for land acquisitions subsequent to the appraisal date.

Note 2—Buildings — Due to incomplete records it was found impossible to determine the actual cost of buildings. In June, 1963 buildings were valued at $427,620. All additions to the building account of subsequent date were listed at actual cost. On February 6, 1970 an appraisal was submitted by The Mutual Inspection Bureau. The values were based on replacement costs less insurance exclusions and normal depreciation. Under date of February 28, 1972 the same firm issued a revised appraisal and in their opinion the sound insurable depreciated value of buildings is $832,865. In the revised appraisal the firm states that no allowance was made for any building changes since date of their original appraisal, February 6, 1970. The values as stated by The Mutual Inspection Bureau were determined largely for insurance purposes. The values as set forth in the balance sheet, therefore, do not necessarily represent market value. The value of buildings as carried on the books of account at June 30, 1972 was $55,948.94 before giving effect to current appraised valuations. Value of buildings at June 30, 1972 after giving effect to current appraisal was $832,865, thus resulting in an appraisal increment of $281,916.

Note 3—Furniture, Fixtures, and Equipment — In June, 1963 an inventory of furniture, fixtures, and equipment was taken and priced by the business manager. On June 30, 1971 inventory of such equipment was taken and valued at retail or replacement value by Northeast Bible College personnel. We did not in any way attempt to verify this evaluation either by count or value. Furniture, fixtures, and equipment acquired since June 30, 1971, are recorded at cost.

Note 4—Acquisition of Property — The college has entered into an agreement with the Department of Health, Education and Welfare whereby, under the provisions of the Federal Property and Administrative Services Act and the Civil Rights Act, it has gained access to approximately 76.8 acres of land, with buildings and equipment, via a quitclaim deed dated August 3, 1976. The property was previously part of the Valley Forge Veteran's Hospital and, as of August 31, 1976, has a fair value of $577,500 as determined by appraisers independent of the college.

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CHESTER :

OBIE L. HARRUP, SR., being first duly sworn according to law, deposes and says that he is the President of the Defendant Valley Forge Christian College and that as such he is authorized to take this affidavit on its behalf; the facts set forth in the foregoing answers of defendant Valley Forge Christian College to plaintiffs' interrogatories are true and correct to the best of his knowledge, information and belief.

/s/ OBIE L. HARRUP, SR.
Obie L. Harrup, Sr.

Sworn to and subscribed

before me this 23 day of
January 1978

LOIS HAMMOND
Notary Public

5. *Cultural:* To develop an appreciation for cultural refinements, social graces, and civic responsibilities.

6. *Physical:* To place proper emphasis on physical development with due recognition of the body as the temple of God.

5. (a) All members of the Board of Regents are affiliated with the Assemblies of God. They are: Rev. R. D. E. Smith, Chairman, Binghamton, NY, Rev. Edward B. Berkey, Vice Chairman, Springfield, MA, Rev. Albert W. Earle, Secretary, Newark, NJ, Rev. Hardy W. Steinberg, Springfield, MO, Rev. O. L. Harrup, Sr., Phoenixville, PA, Mr. Angelo C. Ferri, Yardley, PA, Rev. Russell Williams, Camp Hill, PA, Rev. Phillip Bongiorno, Harrisburg, PA, Rev. Clifford E. Lewis, Camp Hill, PA, Mr. Claude Galletta, Newtown Square, PA, Rev. Anthony DiQuattro, Belleville, NJ, Rev. John G. Leardi, Reading, PA, Rev. Robert Organ, Jamesburg, NJ, Rev. John Paproski, Trenton, NJ, Rev. Frederick Huber, Roselle, NJ, Mr. Joseph Mabey, Hackettstown, NJ, Rev. Al Bartholomew, Syracuse, NY, Dr. A. Glen Everhart, Gloversville, NJ, Rev. Charles A. Thomas, East Aurora, NY, Rev. Samuel R. DiTrolio, Portland, ME, Rev. Peter Miller, Portsmouth, NH, Rev. Donald G. Kroah, Portland, ME, Mr. William Perkins, Portsmouth, NH, Rev. Wallace P., Odum, Sr., Fairfax, VA, Rev. T. Burton Pierce, Fairfax, VA, Mr. Jacob E. Hershman, PH.D., Alexandria, VA, Mr. John V. Slye, Arlington, VA, Rev. Howard Spruill, Silver Springs, MD, Rev. Rayder O. Jacobsen, Auburn, MA, Rev. Hugh Corey, Auburn, MA, Mr. Charles A. Roberts, Somers, CT, Rev. James L. Travis, Salem, NJ, Rev. Arthur Parsons, Columbus, OH, Rev. R. D. Dobbins, Columbus, OH.

(c) (i) and (ii) Rev. O. L. Harrup, Sr. (1972-1977), Rev. A. McDearmid (1975-1977), Rev. R. Hartwick (1969-1977), Rev. G. Fortunato (1963-1976), Rev. K. Levin (1975-1976), Rev. R. Tourville (1961-1964, 1967-1977), Rev. A. Shiner (1964-1977), Rev. H. Strickland, Sr. (1972-1976), Rev. H. Grazier (1954-1962, 1964-1977), Rev. R. Ott (1967-1977), Rev. C. Roberson (1962-1977), Rev. J. Morris (1960-1970), Rev. R. Beisel (1938-1977), Rev. B. Doersom (1962-1977), Rev. E. Harrup (1974-1977), Rev. L. McRae (1975-1977), Rev. J. Reneslacis (1975-1977), Rev. B. Rossier (1976-1977).

10. (a) The Academic Dean, President, or the Board of Administration.

(b) Applications are received by the Dean. The applicant is interviewed by the Dean, President and Board of Administration, appointments are approved by the Board of Regents.

(c) The College requires its faculty members to have been baptized in the Holy Spirit and be living consistent Christian lives.

(d) None.

(e) None.

(f) Yes; Faculty Handbook.

(g) 1939-1977.

(h) Many years ago, the College required its faculty to be affiliated with the Assemblies of God.

11. No negative statement is made; see answer to interrogatory 10(c).

12. (a) No negative statement is made; see answer to interrogatory 10(c).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action
No. 77-1321

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, AND E. MALLARY BINNS, *Plaintiffs,*

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA, AND VALLEY FORGE CHRISTIAN COLLEGE, *Defendants.*

MOTION OF DEFENDANT VALLEY FORGE CHRISTIAN COLLEGE FOR SUMMARY JUDGMENT
(Filed 5/1/78)

Defendant, Valley Forge Christian College, by its attorneys, hereby moves the Court, pursuant to Rule 56b of the Federal Rules of Civil Procedure to enter summary judgment in its favor and against plaintiffs for the reason that the pleadings, discovery on file and affidavits demonstrate that there is no genuine issue as to any material fact and that moving defendant is entitled to judgment as a matter of law for the following reasons:

1. Plaintiffs are four federal taxpayers and one non-profit tax exempt organization, Americans United for Separation of Church and State, Inc.

2. Plaintiffs challenge defendant HEW's transfer of a portion of the land and buildings formerly occupied by the Valley Forge Christian College, pursuant to the Federal Property and Administrative Services Act of 1949, 40 U.S.C. §471, *et seq.* (1970).

3. The individual taxpayer plaintiffs lack standing to bring this action because:

(a) There is no logical link between their status as federal taxpayers and the type of legislative enactment challenged, since the Federal Property and Administrative Services Act is an exercise by the Congress of powers granted to it under Article IV, Section 3, Clause 2 of the United States Constitution, and is *not* an exercise of the taxing and spending power of Article I, Section 8.

(b) These taxpayers fail to demonstrate a nexus between their status as federal taxpayers and the precise nature of the constitutional infringement alleged.

(c) Plaintiffs complain at best about an incidental expenditure in the administration of an essentially regulatory statute.

(d) Individual plaintiffs have suffered no "harm," "damage" or "injury" of any kind upon which the remedial powers of this Court can act; instead, they have at best a generalized grievance about government and how it should dispose of its surplus property.

4. The organizational plaintiff lacks standing to bring the action because:

(a) It pays no federal taxes;

(b) It cannot assert the rights of its members unless it has suffered "injury" or "harm" itself and

(c) Its interest in religious liberty and in the principle of separation of church and state is not a concrete injury which justifies holding that the organization has a stake in the controversy consistent with Article III's requirement of a "case or controversy."

WHEREFORE, defendant, Valley Forge Christian College respectfully prays the Court to enter summary judgment in its favor and against plaintiff.

Respectfully submitted:

/s/ C. CLARK HODGSON, JR.
C. Clark Hodgson, Jr.

/s/ GEORGANNE DAHER TERRILL
Georganne Daher Terrill
STRADLEY, RONON, STEVENS & YOUNG
Attorneys for Defendant
Valley Forge Christian College
1300 Two Girard Plaza
Philadelphia, Pa. 19102
569-3800

Of Counsel:
WILLIAM B. BALL
BALL & SKELLY
127 State Street
Harrisburg, Pa. 17101

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action
No. 77-1321

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, ET AL., *Plaintiffs,*

v.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ET AL., *Defendants.*

MOTION OF DEFENDANT DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE TO DISMISS PLAINTIFFS FOR LACK OF STANDING

(Filed 5/2/78)

COMES NOW, the Defendant, U.S. Department of Health, Education, and Welfare, by and through its counsel, Robert S. Forster, Jr., Assistant United States Attorney, and moves the court as follows:

1. To dismiss the plaintiff, Americans United for Separation of Church and State, Inc. on the ground that it lacks standing to litigate the action currently before this court.

2. To dismiss the plaintiffs, Andrew Leigh Gunn, Edward E. Doerr, Gioele Settembrini, and E. Mallary Binns on the grounds that they each lack standing to litigate the action currently before this court.

3. To dismiss with prejudice the action against the defendant U.S. Department of Health, Education, and Welfare.

Respectfully submitted,

/s/ ROBERT N. DE LUCA
Robert N. de Luca
United States Attorney

/s/ ROBERT S. FORSTER, JR.
Robert S. Forster, Jr.
Assistant United States Attorney

Of Counsel:
MARY M. GOGGIN
PETER A. PAVARINI
Office of the General Counsel
Department of Health, Education,
and Welfare
Washington, D.C. 20201

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action
No. 77-1321

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, AND E. MALLARY BINNS, *Plaintiffs,*

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA, AND VALLEY FORGE CHRISTIAN COLLEGE, *Defendants.*

PLAINTIFFS ANSWER TO MOTION OF DEFENDANT DEPARTMENT OF HEALTH, EDUCATION AND WELFARE TO DISMISS PLAINTIFFS FOR LACK OF STANDING
(Filed 6/19/78)

Plaintiffs, in Answer, paragraph by paragraph, to said Defendants Motion to Dismiss says:

1. Denies that the organizational plaintiff lacks standing.

2. Denies that the individual plaintiffs lack standing.

3. Deny that this defendant is entitled to a dismissal order.

4. This Answer to Motion is based upon the records and files, the documents attached to Plaintiffs Answer to Motion of Defendant Valley Forge Christian College for Summary Judgment and the accompanying memorandum.

WHEREFORE, Plaintiffs pray that said Defendants Motion to Dismiss be denied.

Dated this 15th day of June, 1978.

Respectfully submitted,

/s/ JOHN T. ACTON
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Willow Grove, Pennsylvania 19090
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/s/ LEE BOOTHBY
Lee Boothby
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Telephone: (616) 471-7787

Attorneys for Plaintiffs
Americans United, et al.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action
No. 77-1321

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, AND E. MALLARY BINNS, *Plaintiffs,*

v.

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA, AND VALLEY FORGE CHRISTIAN COLLEGE, *Defendants.*

PLAINTIFFS' ANSWER TO MOTION OF DEFENDANT VALLEY FORGE CHRISTIAN COLLEGE FOR SUMMARY JUDGMENT

(Filed 6/19/78)

Plaintiff, in answer, paragraph by paragraph, to said Defendant's Motion for Summary Judgment says:

1. Admits that Plaintiffs are four federal taxpayers and one nonprofit tax-exempt organization.

2. Admit that Plaintiffs challenge Defendant H.E.W.'s transfer of a portion of the land and buildings but deny that it was "formerly occupied by the Valley Forge Christian College" and say that said college currently occupies and uses said property.

3. Deny that the individual tax payer plaintiffs lack standing for the reasons that are set out in Plaintiffs Brief in Reply to the Memorandum of Defendant Department of Health, Education and Welfare in Support of its Motion to Dismiss Plaintiffs for Lack of Standing and in Reply to Defendant Valley Forge Christian College's Brief in Support of its Motion for Summary Judgment.

4. Deny that the organizational Plaintiff lacks standing to bring the action for the reasons set out in Plaintiffs Brief in Reply to the Memorandum of Defendant Department of Health, Education and Welfare in Support of its Motion to Dismiss Plaintiffs for Lack of Standing and in Reply to Defendant Valley Forge Christian College's Brief in Support of its Motion for Summary Judgment.

5. Plaintiffs in Support of their Answer to Defendants Motion for Summary Judgment and in Support of their claim that they have standing to bring this suit based upon a claimed violation of the Establishment Clause of the First Amendment to the United States Constitution attached hereto and submits in opposition to Defendants Motion the following documents:

(a) Defendant Northeast Bible College's Application for Property which is marked "Exhibit A."

(b) Defendant Northeast Bible College's Attachment to Application for Property which is marked "Exhibit B."

(c) The Quitclaim Deed from H.E.W. to the Defendant College which is marked "Exhibit C."

(d) The Bill of Sale from H.E.W. to the Defendant College which is marked "Exhibit D."

This Answer to Motion is based upon the records and files, the attached documents and the accompanying memorandum.

WHEREFORE, Plaintiffs respectfully pray that said Motion for Summary Judgment be denied.

Dated this 15th day of June, 1978.

Respectfully submitted,

/s/ JOHN T. ACTON
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Telephone: (215) 659-4600

/s/ LEE BOOTHBY
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Attorneys for Plaintiffs
Americans United, et al.

SUPREME COURT OF THE UNITED STATES

No. 80-327

VALLEY FORGE CHRISTIAN COLLEGE, *Petitioner,*

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.

ORDER ALLOWING CERTIORARI

Filed February 23, 1981

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

Supreme Court, U. S.
FILED
SEP 29 1980
MICHAEL RODAK, JR., CLERK

No. 80-327

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

VALLEY FORGE CHRISTIAN COLLEGE, *Petitioner,*

and

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA,

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, and E. MALLARY BINNS, *Respondents.*

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Attorneys for Respondents

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTION PRESENTED

Whether the court of appeals misinterpreted the law of standing when it granted standing to Respondents to challenge, under the Establishment Clause of the First Amendment, a government transfer to a Bible College of property worth more than one million dollars.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-327

VALLEY FORGE CHRISTIAN COLLEGE, *Petitioner,*

and

THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE UNITED STATES OF AMERICA,

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, and E. MALLARY BINNS, *Respondents.*

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

OPINION BELOW

The opinion of the court of appeals is reported at 619 F.2d 252 and is printed in the appendix to the petition at A. 1 — A. 41.

SUMMARY

Respondents contend that the court of appeals' majority opinion and concurring opinion correctly applied the law of standing as developed in the several opinions of this Court.

Factually this suit contends that the United States of America, through its Department of Health, Education and Welfare, has granted to a Bible college, which is facially pervasively sectarian, real estate consisting of seventy-seven acres of land with some seventy buildings and personal property of such quantity and completeness as to make the transfer a "turn key" transfer of real and personal property. The value of the property was set by the government at $1,307,730.00 at the time of the transfer.

Respondents claim that the granting of the property from the United States government to the college under the authority of the Federal Property and Administration Services Act of 1949 is a clear violation of the Establishment Clause of the United States Constitution since the college was so sectarian that the benefits which it received from the government necessarily advanced a religious function.

In addition the transfer arrangement used by the government to effectuate the "gift" of government property to the Bible college would create excessive governmental entangelement which this Court has found to violate the religion clauses of the First Amendment.

Also Respondents contend that when the United States government, acting through HEW, gave a "100% benefit allowance" to the college it, in effect, was a purchase by the government of sectarian education designed only to benefit "born again Christians" and fashioned "to train leaders for church-related ministries." Thus such a purchase by the government would be a direct violation of the Establishment Clause of the First Amendment.

If instead of a grant of property HEW had made a gift to a Bible college using the "coin of the realm," there would be clear violation of the prohibition contained in the

Establishment Clause. To permit the gift of brick and mortar, Chapels and classrooms designed for religious teachings and of tape recorders and projectors to teach religious dogma should be just as clear a violation. Respondents claim that they should have just as much standing to challenge the latter as the former because the interests of the Respondents in the one would be no different than the other.

The constitutional "injury in fact" complained of by the Respondents gives them a sufficient "personal stake in the outcome" to assure a complete perspective of the issues involved. The interest which Respondents assert and seek to safeguard is also within the zone of interests protected by the Establishment Clause. Respondents do not advance an abstract or generalized complaint but set forth a particular and concrete injury that is protected by the constitutional guarantee raised.

STATEMENT OF THE CASE

Northwest Bible College, now known as Valley Forge Christian College, the Petitioner in these proceedings, on April 26, 1976 adopted a resolution authorizing the college to apply to the federal Secretary of Health, Education and Welfare (HEW) to secure certain real property owned by the United States in Chester County, Pennsylvania. The property in question had been declared surplus and was subject to disposal for educational or public-health purposes by the Secretary of Health, Education and Welfare under the provisions of the Federal Property and Administrative Services Act of 1949, as amended and rules and regulations promulgated thereunder. (App. p. 247)* The application of the Bible college also requested that "all furnishings now in the above building, such as beds, chairs, sofas, lamps, desks, dressers,

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* Page references (App. p. _____) are to the Appendix filed with the Third Circuit Court of Appeals. Page references (A. _____) are to the Appendix to the Petition for Writ of Certiorari.

files, laboratory instruments and equipment, and etc., remain with the property for the overall use of the college." (App. pp. 255 & 256).

On or about August 3, 1976 a quit claim deed was executed by and between the United States of America and the Northwest Bible College. The deed recited that the Bible college had made a firm offer to "purchase the property" for one hundred percent (100%) public benefit allowance." (App. p. 262). The deed recited that the value of the real estate was $577,500 (App. p. 276).

The real estate consisted of three parcels totaling 70 acres upon which stood 77 buildings. The deed contained certain conditions subsequent specifically requiring the Bible college to file reports on the operation and maintenance of the property and "such other pertinent data evidencing continuous use of the property for the purpose specified in the property application." The deed also contains a reverter clause. (App. p. 262-275).

On the same date as the execution of the deed, the Secretary of HEW executed a bill of sale whereby personal property with an agreed-upon fair-market value of $730,230 was "sold" and transferred to the college. (App. p. 276). The bill of sale provided that "the benefit which will accrue to the United States from the use of said property. . .is one hundred percent (100%) of the aforesaid fair value and in consideration thereof the purchaser has been granted a public benefit allowance of that percent of the aforesaid fair value." (App. p. 276).

The cost of government acquisition of the 181.43 acre total parcel of property, of which the property in question is a part, in 1942 was $41,553.00. Government appropriations for improvements to the property from 1942 to June of 1973 totalled $13,046,048.00. Thus, the total taxpayer investment was $13,087,601.00. (App. p. 237). The acquisition cost for the portion of the property transferred to the college totaled $10,374,386.00. (App. p. 203).

The purpose of Valley Forge Christian College has been stated by college President Obie L. Harrup, Sr. to be "to offer a systematic training at the collegiate level to men and women for Christian service as either ministers or laymen." (App. p. 39). According to President Harrup, "The college seeks to provide a living and learning experience in the Judaic-Christian tradition. . . ." (App. p. 39). The Bible college bulletin states: "The *primary* purpose of Valley Forge Christian College is to train leaders for church related ministries." (App. p. 84).

The Bible college describes itself as "basically a school for training those who expect to enter some form of Christian service, the motivation of the prospective student is of prime importance." (App. p. 77).

Resident students must have a "born again experience and be of good moral character. Those who have not experienced the Baptism in the Holy Spirit will be encouraged to seek and receive this experience." (App. p. 77).

The Bible college asks prospective students when and where they were converted; whether they have backslidden since being converted and, if so when they have been baptized in the Holy Spirit according to Acts 2:4; what church they attend; and whether they are members of a church. (App. p. 45).

The daily highlight of the Bible college is the Chapel service. "The spiritual tone of the College is maintained as students meet God in worship and enjoy the anointed ministry of the Word by the faculty , visiting ministers, and senior class members. As the Holy Spirit moves upon these services, ample time is made in the schedule for waiting on the Lord. *Attendance is required.*" (Emphasis added.) (App. p. 68).

The Christian Service Department of the Bible college *requires each student* to participate in Christian activities each term. The entire student body is organized into "The Student Missionary Society." (App. p. 68). Each student is given a minimum of thirty-five (35) assignments which *must* be

satisfactorily completed before the student can graduate. "These assignments include a variety of ministries, selected by the Director of Christrian Service . . .Experiences may be provided in the areas of Bible clubs, canvassing, street meetings, junior churches, young peoples' meetings, teaching in Sunday School, services in jails and old folks' homes, and in song leading and preaching in church services." (App. p. 80).

Departure from the school's standards will result in Christian counseling and when necessary "appropriate discipline will be administered in the hope of helping the student develop a mature Christian character." (App. p. 69).

The college maintains a special discount policy which grants: (1) a ten percent (10%) discount on tuition to the wife and children of a pastor or a full-time evangelist, and (2) a twenty-five percent (25%) discount on tuition to ordained ministers. (App. p. 75).

The only four-year degrees available at the Bible college are; the Ministerial Program, especially prepared for those who wish to prepare themselves for pastoral or evangelistic ministries (App. p. 85); the Missionary Program, especially developed for those who wish to prepare themselves for home or foreign missionary ministries (App. p. 86); and the Christian Education Program, especially designed for those who wish to enter the teaching ministries of the church. (App. p. 87). The only three-year certificate programs available are an abbreviated Ministerial Program concentrating on pastoral aspects of the ministry (App. p. 88); a shortened Missionary Program providing basic skills for missionary service (App. p. 89); a limited Christian Education Program providing basic teaching methodology for ministries within local churches (App. p. 90); and a Bible Concentration Program designed to give a thorough and practical knowledged of the *Bible.* (App. p. 91). A one-year Certificate Program is designed primarily for those desiring personal enrichment in Bible and theology, especially Sunday School teachers, Bible-study group leaders,

youth-group leaders, and "other persons in local church leadership positions." (App. p. 91).

The general requirements for graduation include: (1) soundness in doctrine, (2) acceptable deportment and regular attendance in Chapel, and (3) evidence of development and dependability in the required thirty-five (35) Christian Service assignments. (App. p. 81).

All members of the Board of Regents of the Bible college are affiliated with the Assemblies of God and most, if not all, are ministers. (App. pp. 40, 41). The Board consists of four members from each participating district of the Assemblies of God. They are chosen by their respective district presbyteries. The Executive Director of the Department of Education of the Assembly of God, the President of the college, and an executive officer of the Alumni Association are members of the Board of Regents by virtue of their offices. (App. p. 41).

The college requires its faculty members "to have been baptized in the Holy Spirit and be living consistent Christian lives." (App. p. 43). All members of the college administration are affiliated with the Assemblies of God. (App. p. 41).

Respondents Americans United for Separation of Church and State, Inc., a nonprofit, tax-exempt organization claiming a membership of 90,000 nationwide and four of its individual staff members who are citizens and taxpayers of the United States, challenged HEW's transfer of government property to the Bible college. The stated purpose of Americans United is to defend, maintain, and promote religious liberty and the principle of separation of church and state. (App. p. 164). Americans United claims that each of its members will be affected just as though each were a separate individual in this action.

Respondents claimed that this property transfer constituted a violation of their individual rights protected by the Establishment Clause of the First Amendment and sought declaratory and injunctive relief to void the transfer. On Petitioners' motions, the district court dismissed the suit on the

ground that Respondents lacked standing as taxpayers to challenge a transfer of property pursuant to the Federal Property and Administrative Services Act.

Respondents appealed to the United States Court of Appeals for the Third Circuit, which by a vote of two to one reversed the District Court on April 8, 1980 and remanded the case for trial on the merits. The appeals court denied Petitioner's request for a rehearing *en banc*. Petitioner now seeks a Writ of Certiorari.

REASON FOR DENYING THE WRIT

The constitutional 'injury in fact' complained of by the Plaintiffs here gives them a sufficient 'personal stake in the outcome' to assure a complete perspective of the issues involved. And. . .the interest which the Plaintiffs assert and seek to safeguard here is within the zone of interests protected by the Establishment Clause. Opinion of the Court, Adams, Circuit Judge, *Americans United, Etc.* v. *U.S. Dept. of H.E.W.* 619 F. 2d 252, 266 (3d Cir. 1980). (A. 2).

THE JUDGMENT OF THE THIRD CIRCUIT IS CONSISTENT WITH THE TEACHINGS OF THIS COURT ON THE QUESTION OF STANDING AND DOES NOT CONFLICT WITH HOLDINGS OF OTHER CIRCUITS ON THE PRECISE ISSUE

The appeals court opinion carefully reviewed the law of standing as set forth in the several opinions of this Court and correctly applied it in the context of the type of question to be adjudicated. The court of appeals clearly did not repudiate *Flast* v. *Cohen,* 392 U.S. 83 (1968). The court, however, recognized that in *Flast* this Court only dealt with the question of standing from the standpoint of whether a federal taxpayer is without standing to challenge the constitutionality of a federal statute. *Id.* at 85.[1]

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[1] Mr. Justice Stewart, in his concurring opinion in *Flast* v. *Cohen, supra* at 114 wrote:

> I join the judgment and opinion of the Court, which I understand to hold only that a federal taxpayer has standing to assert

Petitioner apparently believes that the Establishment Clause limits only the taxing and spending powers of the government, that a violation of the Establishment Clause may only be challenged by a taxpayer and that *Flast* is the only Supreme Court decision dealing with the question of standing when the challenged governmental action involves the Establishment Clause of the First Amendment

This Court in *Flast* indicated that the challenge there rested solely on Plaintiff's "status as federal taxpayers." *Id.* at 85.[2] It held that "[t]he Establishment Clause was designed as a specific bulwark against such potential abuses of governmental power, and that clause of the First Amendment operates as a specific constitutional limitation upon the exer-

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that a specific expenditure of federal funds violates the Establishment Clause of the First Amendment. Because that clause plainly prohibits taxing and spending in aid of religion, every taxpayer can claim a personal constitutional right not to be taxed for support of a religious institution. The present case is thus readily distinguished from *Frothingham* v. *Mellon*, 262 U.S. 447, where the taxpayer did not rely on an explicit constitutional prohibition but instead questioned the scope of the powers delegated to the national legislature by Article I of the Constitution. *Flast* v. *Cohen*, supra at 114.

[2] The Majority in *Flast, supra* at 101 wrote:

> The various rules of standing applied by federal courts have not been developed in the abstract. Rather, they have been fashioned with specific reference to the status asserted by the party whose standing is challenged and to the type of question he wishes to have adjudicated . . . Such inquiries into the nexus between the status asserted by the litigant and the claim he presents are essential to assure that he is a proper and appropriate party to invoke federal judicial power. Thus our point of reference in this case [*Flast*] is the standing of individuals who assert only the status of federal taxpayers and who challenge the constitutionality of a federal program. Whether such individuals have standing to monitor that form of action turns on whether they can demonstrate the necessary stake as taxpayers in the outcome of the litigation to satisfy Article III requirements.

cise by Congress of the taxing and spending power conferred by Art. 1, §8." *Id.* at 104.[1]

The opinion of the court of appeals in the instant case recognized that *Flast* v. *Cohen, supra,* enunciated the modern law of federal taxpayer standing. *Americans United, supra* at 259. (A. 14). The appeals court, however, held that "[a]s enunciated in *Flast,* the doctrine of taxpayer standing was not meant to qualify the general standing requirement of a "personal stake in the outcome.' To the contrary, *Flast*'s purpose was to outline a limited set of circumstances in which an allegation of financial injury in the form of increased tax liability *by itself* might be considered an acceptable stake on which to predicate standing, quite apart from any allegation of individuated injury to other judicially cognizable interests." (Emphasis added.) *Id.* at 261. (A. 19). This Court has in *United States Parole Com'n.* v. *Geraghty,* 100 S.Ct. 1202, 1212 (1980) recently stated that "[t]he purpose of the 'personal stake' requirement is to assure that the case is in a form capable of judicial resolution. The imperatives of a dispute capable of judicial resolution are sharply presented issues in a concrete factual setting and self-interested parties vigorously advocating opposing positions."

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[1] In responding to Petitioner's interrogatories, Respondent Americans United said:

> Plaintiff claims that this donation of public property acquired from tax funds is a violation of the establishment clause of the First Amendment to the United States Constitution. The purpose of this lawsuit is to attempt to prevent a violation of the constitutional rights guaranteed under the establishment clause of the First Amendment to the United States Constitution and to prevent the violation of the principle of separation of church and state which are inherent in the First Amendment to the United States Constitution. This lawsuit will serve the function of providing for a "judicial determination of the question of whether the First Amendment has, in fact, been violated by the actions of Defendants, and will further provide a means of redress for such violations. (Answer of Plaintiff Americans United for Separation of Church and State to Interogatories of Defendant, Valley Forge Christian College, ¶20, App. 152).

The appeals court in analyzing the instant case and comparing it with *Flast* said that in contrast to the construction of the Plaintiffs' contentions in Flast, "the litigants here do allege injury in fact to an interest other than the economic interest they share as taxpayers. They claim that the challenged action injures their important concern in the separation of church and state and that this is within the zone of interests protected by the Establishment Clause of the First Amendment. Thus, their appeal squarely presents the novel and important question posed by Justice Fortas in *Flast,* which the Court did not reach and thus did not decide: whether 'the vital interest of a citizen in the establishment issue, without reference to his taxpayer's status, would be acceptable as a basis for [standing to bring] this [kind of] challenge." *Americans United, supra* at 262. (A. 21-22).[4]

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[4] Mr. Justice Fortas in his concurring opinion in *Flast, supra* at 115-116 said:

> Because of this unique 'nexus' in my judgment, it is not far-fetched to recognize that a taxpayer has a special claim to status as a litigant in a case raising the 'establishment' issue. This special claim is enough, I think, to permit us to allow the suit coupled, as it is, with the interest which the taxpayer and all other citizens have in church-state issues. In terms of the structure and basic philosophy of our constitutional government, it would be difficult to point to any issue that has a more intimate, pervasive, and fundamental impact upon the life of the taxpayer—and upon the life of all citizens.
>
> Perhaps the vital interest of a citizen in the establishment issue, without reference to his taxpayer's status, would be acceptable as a basis for this challenge. We need not decide this. But certainly, I believe, we must recognize that our principle of judicial scrutiny of legislative acts which raise important constitutional questions requires that the issues here presented—the separation of church and state—which the Founding Fathers regarded as fundamental to our constitutional system—should be subject to judicial testing. This is not a question which we, if we are faithful to our trust, should consign to limbo, unacknowledged, unresolved, and undecided.
>
> On the other hand, the urgent necessities of this case and the precarious openings through which we find our way to confront it, do not demand that we open the door to a general assault upon exercises of the spending power. The status of taxpayer should not be accepted as a launching pad for an attack upon any target other than legislaion affecting the Establishment Clause.

This Court in *Flast* held that the Establishment Clause specifically limits the taxing and spending power conferred by Art. 1, §8 and added that "[w]hether the Constitution contains other specific limitations can be determined only in the context of future cases." *Flast, supra* at 105

Petitioners here would have the clock on the developing law of standing stop in 1968 with this Court's *Flast* ruling. They gloss over decisions of this Court in 1970, which, together with *Flast,* have basically reoriented the federal law of standing. See *United States Parole Com'n* v. *Geraghty, supra* at 1212, n.11.

In *Data Processing Serv. Organizations* v. *Camp,* 397 U.S. 150 (1970), and *Barlow* v. *Collins,* 397 U.S. 159 (1970), the old test of "a recognized legal interest" was specifically rejected and was replaced by two new tests. The first, based on Article III, is whether there is "injury in fact, economic or otherwise." The second test is "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question" *Data Processing Serv. Organizations* v. *Camp, supra* at 151-53.[6]

In *Data Processing* this Court, in seeking to apply its prudential consideration of standing, as apart from the "case" or"controversy" test, focused upon "the question of whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected by the statute or constitutional guarantee in question." *Id.* This was also the focus of the court of appeals in the instant case.[7] In *Data Processing* this Court appears to have made a

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[6] In the *Data Processing, supra* at 151, this Court said that "Generalizations about standing to sue are largely worthless."

[7] The Opinion of the court of appeals said:

> The modern law of standing set forth in *Data Processing* and *Barlow* and reaffirmed in the same words since, requires no more than an allegation that the challenged official action has caused the plaintiff 'injury in fact, economic or otherwise' to

special effort to instruct that "a spiritual stake in First Amendment values [is] sufficient to give standing to raise issues concerning the Establishment Clause." *Id.* at 154

In ruling for Respondents, the court of appeals distinguished the instant case from *Schlesinger* v. *Reservists Comm. to Stop the War,* 418 U.S. 208 (1974) and *United States* v. *Richardson,* 418 U.S. 166 (1974), which appear to be based upon the inadequate nature of the plaintiff's alleged injury in fact. *Americans United, supra* at 263. (A. 24-27). The court of appeals noted that "plaintiffs here advance neither an abstract nor generalized complaint but set forth instead a particular and concrete injury to a right that is allegedly protected by the constitutional guarantee raised." *Id.* at 265. (A. 27).[8]

It is clear that Petitioners seek to hide behind the "standing" shield even though a Bible college has received substantial federal property purchased with tax monies. Petitioners would have this Court believe that it is the victim. It is not, for over four years a Bible college has used facilities which

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an interest 'arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question." Requiring 'injury in fact' insures that standing to sue is conferred only on individuals having a 'personal stake in the outcome' of a controversy, and not on those merely generalized or external preferences about its outcome.' *Americans United, supra* at 256. (A. 9).

[8] Judge Adams in the majority Opinion said:

Their [Plaintiffs] claim . . . is that the challenged transfer of governmental property to a religios institution seriously injures their individual and personal constitutional right of religious liberty and separation of church and state. Unlike the general limitations at issue in *Reservists* and *Richardson,* certain other constitutional provisions, such as the First Amendment, create legal rights in individuals. Yet, unless individuals claiming an encroachment of their legal rights have some recourse other than the political process for the vindication and protection of those rights, the proud claim that individual citizens have rights against the government may be emptied of significance. *Americans United, supra* at 265. (A. 27).

were to a large extend bought and paid for by the taxpayers of this nation and then handed over to the Bible colllege free of charge. Respondents, and others aggrieved by this unconstitutional action, are the real victims. It is significant that neither the Bible college nor the government denies that the constitutional wall of church-state separation has been breached. They implicitly say that no one can stop them from violating the Constitution, that no one can prevent this breach of the Establishment Clause.

The government apparently believes it has found a method by which it may funnel millions of dollars worth of valuable property to pervasively sectarian institutions with no one being able to object. Petitioners point out that "[u]ntil this lawsuit, the Federal Property Act had never been challenged in its 31 year history; none of the hundreds and hundreds of surplus property transfers to health and educational institutions (including those which were church-related) had ever been questioned." (Petition, p. 8-9). The other side of this sad commentary of governmental largesse to church institutions is found in the opinion of the court of appeals, which noted that "[s]ince the enactment of this Act, HEW has authorized more than 650, transfers of surplus government property to various religious institutions. The total fair market value of government property transferred to denominationally sponsored organizations during this period amounted to more than $25,700,000.00." *Americans United, supra* at 254. (A. 3).

Petitioners fail to reveal that the government giveaway of public property here attacked represents one of the largest surplus property transfers to any religious institution.

This whole concept advanced by Petitioners was rejected by the District of Columbia Circuit in *Allen* v. *Hickel*, 424 F.2d 944, 946 (D.C. Cir. 1970), which held, as did the Third Circuit in the present case, that "[t]he Supreme Court has recently made clear that standing to present claims founded on the Constitution. . .may stem from non-economic values

as well as economic values . . .[citations omitted]. The Court made it particularly clear that there is a readiness to find standing conferred by non-economic values in order to consider issues concerning the Establishment Clause and Free Exercise clause." Contrary to Petitioner's inference, the judgment of the Third Circuit is consistent, not out of step, with the ruling of the D.C. Circuit in the context of the specific type of question here before the Court.[9] The D.C. Circuit ruling in *Allen* v. *Hickel* has never been repudiated by that court.

THE PROPERTY TRANSFER IN THE INSTANT CASE CLEARLY VIOLATES THE ESTABLISHMENT CLAUSE

The Statement of Facts has set out in some detail the substantive facts of this case because this Court in *Flast* v. *Cohen, supra* at 83, pointed out that it is appropriate to examine the substantive issues involved to "determine whether there is a logical nexus between the status asserted and the claim sought to be adjudicated." *Id.* at 102. Standing can be discussed meaningfully only in the context of the precise contention of the parties.[10]

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[9] In *Allen* v. *Hickel, supra* at 946-47, which involved an action brought to enjoin construction and maintenance of a creche on federal parkland in connection with a Christmas pageant, the court said:

> In the present case we concluded that the issues under the Free Exercise and Establishment Clauses are presented by plaintiffs having standing, who present an injury, in the impairment of non-economic values, having a personal stake in the outcome of the controversy,' as contrasted with mere airing of 'generalized grievances about the conduct of government.' An aspect of the case that underscores the standing of the plaintiffs is their allegation that the defendants are proposing to devote Government park property to uses inconsistent with the Free Exercise and Establishment Clauses."

[10] One commentator has suggested that standing should not be treated as a threshold issue, but rather should be viewed as a com-

In this case Respondents contend that the transfer of real and personal property to the Bible college violates the Establishment Clause of the First Amendment and is an unconstitutional application of federal law because it permits the use of assets paid for by taxes for religious purposes and also creates impermissible entanglement.

In this case it is clear that tax funds were used to acquire the property in question: Since 1942 more than ten million dollars of taxpayers' funds was used to improve and furnish the subject property so that the total acquisition costs of the facility totaled $10,374,386.00. (App. p. 203).

HEW determined that the current fair market value of this government property at the time of transfer was $1,307,730.00. (App. p. 203). The Bible college apparently agreed with the government that the real estate transferred had a fair market value of $577,500.00 as set out in the deed of transfer. (App. p. 276). The Bible college also agreed by executing the bill of sale that the personal property involved in the real estate transfer had a fair market value of $730,230.00 (App. pp. 276, 203).

What did the Bible college pay into the federal treasury for this valuable property? Not one cent, even though the Bible college admitted that the fair value was $1,307,730.00 and even though it stated in its application that the buildings were "easily adaptable to such use with a minimum of expense." (App. p. 255).

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ponent of a plaintiff's claim for relief since its resolution necessarily involves substantive issues such as injury, duty, and causation. See Albert, *Standing to Challenge Administrative Action: An Inadequate Surrogate for Claims for Relief*, 83 Yale L.J. 425, 426-27 (1974).

The Petitioner argues that there was no outright gift of tax funds to a sectarian college. The Bible college agreed to operate in a manner whereby a "public benefit" would accrue from the use of the property by the Bible college. In other words, HEW agreed to deed the property to the Bible college, not for cash, but for educational benefits to be rendered to the public by the Bible college having at least a value equal to the fair market value of the real and personal property, that is $1,307,730.00.

But what did the government actually buy? HEW purchased a Bible college program designed for "born again Christians" and fashioned "to train leaders for church related ministries." The public benefit which the taxpayers of this nation are receiving in return for the transfer of public property worth $1,307,730.00 is composed of study designed only to train ministers, missionaries, and those engaged in various ministries of a church. It is an educational program designed for those who are willing to agree to attend Chapel and to accept thirty-five (35) Christian Service assignments, an educational program where graduation is dependent upon demonstration that the student evidences "soundness in church doctrine."

What did the Bible college receive from the government? It received a turn-key facility which with only a minimal outlay of cash was convertible to the Bible college's brand of sectarian education.

This aid to the Bible college was neither indirect nor incidental. More than $1.3 million worth of government property was given to this church-operated, pervasively sectarian, Bible college. This grant did not go to a college with an educational program similar to that found in *Hunt* v. *McNair,* 413 U.S. 734 (1973) and *Tilton* v.

Richardson, 403 U.S. 672 (1971). Rather it was made to a Bible college in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious purpose and the mission of the sponsoring church. This grant of property to the Bible college has the impermissible primary effect of advancing religion. *Meek* v. *Pittenger*, 421 U.S. 349, 366 (1975). Respondents cannot understand how it can be logically argued that the Establishment Clause is not a limitation on such governmental action.

THE CONTRACTUAL ARRANGEMENT BETWEEN HEW AND THE BIBLE COLLEGE CREATES IMPERMISSIBLE ENTANGLEMENT

The long-term contractual arrangement entered into between HEW and the Bible college also demands continued governmental contacts to insure enforcement. The deed requires the college to file reports with HEW on the operation and maintenance of the property with the possibility of reversion if a violation occurs. (App. p. 267). Similarly the bill of sale requires the property be used only as authorized for a period of five (5) years. (App. p. 305). Such a spectre of entanglement dictates that the contract entered into between HEW and the Bible college be struck down. *Walz* v. *Tax Commission of the City of New York*, 397 U.S. 664 (1970); *Lemon* v. *Kurtzman*, 431 U.S. 756 (1971); *Meek* v. *Pittenger*, *supra*; *Wolman* v. *Walter*, 433 U.S. 229 (1977); *NLRB* v. *Catholic Bishop*, 440 U.S. 490 (1979).

It is clear that religious indoctrination is a substantial purpose and activity of this Bible college. By that reason alone, there is a greater need for intensive government surveillance and resulting entanglement between government and religion. *Tilton* v. *Richardon*, *supra*.

THE CONTRACTUAL ARRANGEMENT BETWEEN THE GOVERNMENT AND THE BIBLE COLLEGE VIOLATES THE TEACHINGS OF *TILTON* v. *RICHARDSON*

The contractual arrangement between HEW and the Bible college is a clear violation of the teachings of *Tilton* v. *Richardson, supra.* In *Tilton,* this Court noted that an attempt has been made to insure that if a recipient institution had violated any statutory restrictions in the use of a federally financed facility, including its use for sectarian instruction or religious worship, the government had the authority to recover an amount equal to the projection of the facility's present value as the federal grant bore to its original cost. The Court, however, found that the provision was inadequate to take care of the constitutional problem because the remedy was available to the government only if the statutory condition was violated "within twenty years after the completion of construction." *Id.* at 683. The Court stated that "limiting the prohibition for religious use of the structure for 20 years obviously opens the facility to use for any purpose at the end of that period." *Id.* The Court made clear that it cannot assume that substantial structure has no value after that period and hence the unrestricted use of a valuable property is in effect a contribution of some value to a religious body if at the end of twenty years, the building is, for example, converted into a Chapel or otherwise used to promote religious interests. The original federal grant will in part have the effect of advancing religion. The Court held that this was a trespass on the religious clauses. In the instant case restrictions on the use of the property are equally deficient. (App. pp. 267-68, 305).

RESPONDENTS SHOULD HAVE AS MUCH STANDING HERE AS DID PLAINTIFFS IN FLAST

The courts have repeatedly held that what government is prohibited from doing directly, it shall not do indirectly.[11] It is clear that government is prohibited from making a direct appropriation for the purpose of setting up and furnishing a pervasively sectarian college. It may not do this indirectly by declaring that property obtained from and improved by treasury funds is surplus property. The individual Plaintiffs should have as much standing to challenge the latter as the former. This would at least approximate the same unconstitutional governmental action as financial grants made directly under the Taxing and Spending Clause of Article I, Section 8, of the Constitution. The Establishment Clause does not only limit the power of Congress under Article I, Section 8, but is a limitation on all of its powers.

A grant of tangible property purchased with tax funds and valued at $1.3 million should provide as much interest upon which to bottom standing as a cash grant of $1.3 million. The personal stake in the outcome

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[11] As stated in *School Dist.* v. *Schempp*, 374 U.S. 203, 229-30 (1963), Mr. Justice Douglas, concurring:

> The most effective way to establish an institution is to finance it; and this truth is reflected in the appeals by church groups for public funds to finance religious schools. . . .
>
> Such contributions may not be made by the State even in a minor degree without violating the Establishment Clause. It is not the amount of public funds expended; . . . it is the use to which public funds are put that is controlling. For the First Amendment does not say that some forms of establishment are allowed; it says that 'no law respecting the establishment of religion' shall be made. What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery.

of this suit would be no different. Any contrary outcome would be based upon a purely artificial distinction. Petitioners argue that Respondents have no standing and thus may not seek relief in the courts, instead Petitioners contend that Respondents are relegated to having their grievances redressed by political process.

Petitioners apparently fail to understand that as this Court said in *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624, 638 (1943): "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."

This Court recently held that "[t]he values enshrined in the First Amendment plainly rank high 'in the scale of our national values,'" *NLRB* v. *Catholic Bishop of Chicago, supra,* 99 S.Ct. at 1319. The religious clauses of the First Amendment hold a dominant position among the rights granted by the Constitution. Thus, when alleging such rights, the requirements of standing are satisfied when violations of such rights are alleged. Douglas, *The Bill of Rights Is Not Enough,* 38 N.Y.U. L. Rev. 206, 226-27 (1963). This Court has observed that effective enforcement of the Bill of Rights may require exceptions to the usual rights governing standing. *NAACP* v. *Button,* 371 U.S. 415, 433 (1963).

If the assertions of the Petitioners and the holding of the district court are correct, no one could prevent the transfer of any federal structure in the country to a church for worship purposes if the property first was

declared surplus under the Property Act or some similar federal law.[12]

This Court in *Walz, supra* at 669, emphatically declared that the Constitution will not tolerate an establishment of religion and recognized the importance of *chartering a judicial course* that avoided "any resemblance of established religion." This cannot be accomplished by the courts if no one is permitted to have standing to put the case to the court.

To say that no citizen has standing to obtain a judicial ruling on either the aid to religion or entangle-

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[12] Judge Adams, in the Opinion of the Court, *Americans United, supra* at 266, stated:

> One of the central purposes of judicial review is to restrain overreaching majorities from violating the rights of individuals that the Constitution was designed to protect. Yet, under the defendants' view, Congress could transfer to a particular religious organization such national facilities as the Naval Observatory or the Army War College, secure in the knowledge that any individual citizen attempting to challenge such action as an abridgement of his or her rights under the Establishment Clause would not even be granted standing to make the claim.

This concern of the court is not unlike that expressed in *Flast, supra* at 98, n.17

> The logic of the Government's argument would compel it to concede that a taxpayer would lack standing even if Congress engaged in such palpably unconstitutional conduct as providing funds for the construction of churches for particular sects. See *Flast* v. *Gardner*, D.C. 271 F.Supp. 1, 5 (1967) (dissenting opinion of Frankel, J.). The Government professes not to be bothered by such a result because it contends there might be individuals in society other than taxpayers who could evoke federal judicial power to challenge such unconstitutional appropriations. However, if as we conclude there are circumstances under which a taxpayer will be a proper and appropriate party to seek judicial review of federal statutes, the taxpayer's access to federal courts should not be barred because there might be at large in society a hypothetical plaintiff who might possibly bring such a suit.

ment questions here raised would be to render the Establishment Clause of the First Amendment meaningless.

The injuries suffered by Respondents are of the gravest type. They have a First Amendment right to be free from governmental action that aids religion and thus infringes upon the Establishment Clause. Respondents have the constitutional right to live under a government that does not support a church or religion in general, where the state separates itself from the church and where intrusion into the precincts of one by the other is not permitted. *Lemon, supra* at 657.

To deny Respondents the right to sue would effectively foreclose judicial inquiry into serious breaches of the prohibitions of the First Amendment, thus emasculating the Bill of Rights, which was designed to protect the minority against the excesses of government and the will of the majority. No greater injury could be alleged.

The federal action here attacked is not merely a regulatory activity. It is as much a program of federal assistance as any other federally financed educational program authorized by Congress.

The court of appeals, in its majority and concurring opinions, was faithful to the teachings of this Court in the applications of the legal principles regarding standing. It has rejected the wooden logic of Petitioners which seeks to still the effectiveness of the Establishment Clause whenever government violates that fun-

damental constitutional guarantee of religious freedom.[13]

Here the court of appeals, after fully reviewing the question of standing and applying pertinent principles, has determined that Respondents are proper parties to request adjudication of the issues here raised, and the appeals court has remanded the case for trial on the merits. No exceptional reason has been shown by Petitioners for review of the nonfinal judgment of the court of appeals at this time. *American Construction Co.* v. *Jacksonville, T. & K. Ry. Co.*, 148 U.S. 372, 384 (1893); *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).

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[13] Justice Brennan, concurring in *School Dist.* v. *Schempp*, *supra* at 256-257, presented his view of the individual right involved:

> It has also been suggested that the 'liberty' guaranteed by the Fourteenth Amendment logically cannot absorb the Establishment Clause because that clause is not one of the provisions of the Bill of Rights which in terms protects a 'freedom' of the individual . . . The fallacy in this contention, I think is that it underestimates the role of the Establishment Clause as a coguarantor, with the Free Exercise Clause, of religious liberty.

CONCLUSION

For the reasons above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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reme Court, U. S.
FILED
OCT 28 1980
MICHAEL RODAK, JR., CLERK

No. 80-327

In the Supreme Court of the United States

OCTOBER TERM, 1980

VALLEY FORGE CHRISTIAN COLLEGE, PETITIONER

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-327

VALLEY FORGE CHRISTIAN COLLEGE, PETITIONER

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether respondents have standing to sue in their capacity as citizens to challenge actions of the federal government alleged to constitute an establishment of

*The United States and the Department of Health, Education, and Welfare were defendants in the district court and appellees in the court of appeals. Petitioner has erroneously aligned the federal parties as petitioners in the caption of its petition. Under Rule 19.6 of the Rules of this Court, all parties other than the petitioners are respondents.

Pursuant to the Department of Education Organization Act, Pub. L. No. 96-88, 93 Stat. 668, the Department of Health, Education, and Welfare was abolished. Section 505(e) of the Act, 93 Stat. 691, provides that suits pending against HEW on its effective date shall

religion when respondents cannot allege injury to themselves as taxpayers.

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survive with the Secretary of Education substituted as a party if, as here, the suit concerns governmental functions transferred to the Department of Education.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A41) is reported at 619 F. 2d 252. The order of the district court (Pet. App. A42-A44) is not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. A45-A46) was entered on April 8, 1980. A petition for rehearing was denied on June 3, 1980 (Pet. App. A47-A48). The petition for a writ of certiorari was filed on August 30, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Respondents, an organization dedicated to the principle of separation of church and state and several of its members, challenge the transfer by the Department of Health, Education, and Welfare to petitioner Valley Forge Christian College of certain surplus federal land, buildings and equipment. The property, formerly part of the Valley Forge Army Hospital, was deeded to the college in return for its commitment to use the property in a manner beneficial to the public. The government conveyed the property pursuant to the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 848(k)(1).

Respondents brought suit in the United States District Court for the Eastern District of Pennsylvania, alleging that the conveyance of valuable federal property to a church-affiliated school violated the Establishment Clause of the First Amendment.[1] The district court dismissed the

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[1] The court of appeals stated that the college is "admittedly sectarian" (Pet. App. A3). However, while there was some discovery in the district court on this question, neither the college nor the government conceded that the college is pervasively sectarian. This

suit for lack of standing to sue, reasoning that, since the school received surplus property rather than a grant from current appropriations, respondents could not show the necessary nexus between the challenged action and their economic interest as taxpayers to meet the test of *Flast* v. *Cohen*, 392 U.S. 83 (1968) (Pet. App. A42-A44).

The court of appeals reversed (Pet. App. A1-A41). The court agreed with the government that respondents do not have standing to sue as "taxpayers," since the property here involved is "surplus" property and is not the object of continuing appropriations by Congress. Hence, its disposition could not result in any discernible pocket-book injury to taxpayers. Nonetheless, the court of appeals found that respondents had standing to sue based on their personal rights under the Establishment Clause of the First Amendment. The Establishment Clause, in the court's view, affords each citizen a protected right to be free of governmentally established religion and the religious pressures that may result from establishment of religion. The court perceived a religious liberty value in the establishment clause—establishment of religion "injures [respondents'] individual and personal constitutional right of religious liberty and separation of church and state" (Pet. App. A27).

Judge Rosenn, in a concurring opinion, concluded that respondents "have standing because they possess the necessary adversity of interest and, as a practical matter, no one is better suited to bring this lawsuit and thus vindicate the freedoms embodied in the Establishment Clause" (Pet. App. A30-A31).

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factual issue has not yet been fully explored because the district court granted the government's motion to dismiss the complaint and the college's motion for summary judgment. Those rulings were based solely on lack of standing to sue (Pet. App. A43-A44).

Judge Weis, in dissent, concluded that respondents did not have a concrete interest in the controversy and that a "generalized grievance brought by concerned citizens seeking to enforce a particular constitutional guarantee has been deemed too abstract to satisfy the injury in fact component of standing" (Pet. App. A36). He observed that the majority's ruling establishes new law, extending beyond this Court's prior standing decisions (*id.* at A41).

ARGUMENT

The decision of the court of appeals addresses a question under the doctrine of standing to sue that no court previously has faced. Accordingly, the decision does not conflict with any decision of this Court or any other court of appeals. In addition, the decision is interlocutory, leaving open all issues of liability and relief that may arise in this litigation. Moreover, it is not possible to determine at this time whether the decision will have a significant effect on Establishment Clause litigation in general. Review by this Court of the question decided by the court of appeals is therefore unwarranted at this time.

1. The decision of the court of appeals addresses a difficult and novel question that was raised but not decided in *Flast* v. *Cohen*, 392 U.S. 83 (1968)—whether "the vital interest of a citizen in the establishment issue, without reference to his taxpayer's status, would be acceptable as a basis for" standing to sue. 392 U.S. at 115-116 (Fortas, J., concurring). That issue was not reached in *Flast* because the Court was able to predicate standing to sue on the plaintiffs' taxpayer status.[2]

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[2]The Court recognized standing to sue under the following circumstances (392 U.S. at 102-103):

> First, the taxpayer must establish a logical nexus between that status and the type of legislative enactment attacked. Thus, a

Normally, in cases brought under the Establishment Clause, standing to sue exists either because taxpayer funds are being spent to aid religion (as alleged in *Flast*) or because the challenged actions of the government impinge directly on the interests of the particular plaintiff.[3] However, this Court's decisions also confirm that plaintiffs may not bring suit solely in their capacity as "citizens" to litigate generalized complaints that the federal government is not complying with constitutional standards. See *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208 (1974) (challenge to members of Congress holding reserve commissions); *United States* v. *Richardson*, 418 U.S. 166 (1974) (challenge to the CIA's secret budget).

> taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, § 8, of the Constitution. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute. * * * Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8.

[3]Thus, in *Abington School District* v. *Schempp*, 374 U.S. 203 (1963), this Court found that school children and their parents had standing to complain of the practice of conducting prayers in public schools. The Court stated (*id.* at 224 n.9):

> It goes without saying that the laws and practices involved here can be challenged only by persons having standing to complain. But the requirements for standing to challenge state action under the Establishment Clause, unlike those relating to the Free Exercise Clause, do not include proof that particular religious freedoms are infringed. * * * The parties here are school children and their parents, who are directly affected by the laws and practices against which their complaints are directed. These interests surely suffice to give the parties standing to complain.

As both the district court and the court of appeals agreed, respondents do not meet the *Flast* test for taxpayer standing because they do not challenge a taxing or spending program under Art. I, § 8 of the Constitution. Rather, they challenge a governmental transfer of surplus property to a religiously-oriented college, which occurred after the government obtained full use of the property. The impact on a taxpayer of one method of disposition of surplus federal property rather than another is indirect and speculative. Nonetheless, we recognize that the constitutional claims made in this case differ in some respects from those in *Richardson* and *Reservists Committee*, which involved claims of violations of constitutional provisions concerning the internal organization and processes of government rather than violations of a provision of the Bill of Rights. Thus, plaintiffs in suits such as this may argue that, while a citizen has only an abstract interest in good government that is threatened by a violation of the housekeeping provisions, any citizen is more significantly affected in his individual capacity when the government takes substantial action to establish religion.

Resolution of the question presented in this case calls for a reexamination of the doctrine of standing to sue in the context of the Establishment Clause. There is no need for this Court to undertake that difficult task on the basis of an interlocutory decision of a single court of appeals.[4] Moreover, in view of the fact that many Establishment Clause suits already may proceed under the principles

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[4] *American Jewish Congress* v. *Vance*, 575 F. 2d 939 (D.C. Cir. 1978), relied on by petitioner, denied standing to sue to a plaintiff organization challenging discrimination against its members. The D.C. Circuit did not consider the question of standing to sue left open in *Flast* and resolved in the present case.

established by this Court in *Flast* and in *Schempp*, the practical consequences of the decision of the court of appeals in this case may be limited. Review of the issue presented in this case should therefore await further development of the case law in this area.

2. We recognize that the decision of the court of appeals exposes petitioner to the hardship of defending this suit on the merits and opposing any remedies that may ultimately be ordered after trial. Should the college suffer an adverse judgment on the merits, a petition for certiorari may be filed following appellate review. *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967). At trial, of course, the college may contend that the transfer of property did not violate the Constitution, or if it did, that such a ruling should not be given retroactive effect. *Chevron Oil Co.* v. *Huson*, 404 U.S. 97 (1971). The college may also contend that principles of equity forbid a decree that would compel it to return the property, in view of its good faith and justifiable reliance on the grant from the federal government and its substantial investment of money in the property. See Pet. 5.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1980

DOJ-1980-10

Office-Supreme Court, U.S.
FILED
MAY 8 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-327

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AND
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On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF PETITIONER

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QUESTIONS PRESENTED

1. Do citizens and organizational plaintiffs without taxpayer status nevertheless have standing as citizens to maintain an action to challenge the transfer of surplus federal property to a church-related college, pursuant to the Federal Property and Administrative Services Act of 1949?

2. Can an alleged violation of a citizen's "shared right" to a government which does not establish religion, without more, satisfy the injury in fact requirement for standing under Article III?

PARTIES

In the United States District Court for the Eastern District of Pennsylvania and in the United States Court of Appeals for the Third Circuit, Americans United for Separation of Church and State, Inc. ("Americans United" or the "organization") and four of its employees, A. L. Gunn, E. T. Doerr, G. Settembrini and E. M. Binns (the "individuals"), were plaintiffs and appellants respectively; the United States Department of Health, Education, and Welfare, the United States of America (collectively referred to as the "Government") and Northeast Bible College, a/k/a Valley Forge Christian College (the "college") were defendants and appellees respectively. The designation of the college in the Amended Complaint is incorrect. The college changed its name to Valley Forge Christian College on January 1, 1977, before this lawsuit was begun (J.A. 33).

The college filed a Petition for Writ of Certiorari on August 30, 1980; the Government did not join in the filing of the petition and became respondents. Thus, the college is the sole petitioner and the respondents are the Government, the organization and the individuals. Although the Government was a codefendant and a co-appellee below, it is now a respondent supporting petitioner.

Pursuant to the Department of Education Organization Act, Pub.L.No. 96-88, 93 Stat. 668, 20 U.S.C. §3401 (1979), the Department of Health, Education, and Welfare was abolished. Under §505(e) of the Act, 93 Stat. 691, 20 U.S.C. §3505(e) (1979) the Department of Education is now the Government respondent replacing the Department of Health, Education, and Welfare.

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BRIEF OF PETITIONER

OPINIONS BELOW

The December 15, 1978 Order of the district court granting petitioner's Motion for Summary Judgment is unreported (Pet. App. A42). The three opinions of the United States Court of Appeals for the Third Circuit (majority opinion by Adams, J., concurring opinion by Rosenn, J., dissenting opinion by Weis, J.) are reported as: *Americans United for Separation of Church and State, Inc., et al.* v. *United States Department of Health, Education and Welfare, et al.* at 619 F.2d 252 (3d Cir. 1980) (Pet. App. A1).

JURISDICTIONAL STATEMENT

On April 8, 1980, the United States Court of Appeals for the Third Circuit rendered the judgment which is now before this Court for review. On June 3, 1980, the court of appeals denied petitioner's Petition For Rehearing *En Banc.* On February 23, 1981, this Court granted petitioner's Petition for

Writ of Certiorari. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Art. I, §8, Cl. 1 — Pet. App. A49

U.S. Const. Art. III, §2, Cl. 1 — Pet. App. A49

U.S. Const. Art. IV, §3, Cl. 2 — Pet. App. A49

U.S. Const. Amend. I — Pet. App. A50

Federal Property and Administrative Services Act of 1949, 40 U.S.C. §471 et seq. (1970) Pet. App. A50-A51

STATEMENT OF THE CASE

This action was instituted after respondents, Americans United for Separation of Church and State, Inc., ("Americans United" or the "organization") and four of its employees, Gunn, Doerr, Settembrini and Binns (the "individuals"), learned from a news release that the United States had, through the Department of Health, Education & Welfare (the "Government" or "HEW"), transferred to Valley Forge Christian College (the "college") real and personal property which had been determined surplus to governmental needs. The college had applied to HEW and received this property under a previously unchallenged federal program which has been in existence for over thirty years. Through this program the Government may dispose of surplus property to health and educational institutions.

After discovery, the Government filed its Motion to Dismiss and the college filed its Motion for Summary Judgment. Both were granted by the district court which held that Americans United and the individuals lacked standing to sue under *Flast* v. *Cohen*, 392 U.S. 83 (1968). The court of appeals reversed; although it agreed that the plaintiffs lacked standing under *Flast*, it held that the interest of a citizen in a government which is obedient to the Constitution warrants standing to sue.

In 1973, the Secretary of Defense announced the closing of 274 military installations including the Valley Forge General Hospital located near Phoenixville, Pennsylvania. "[D]eclining workload, reduction of end strength of the Army, [and] economy" were among the reasons cited for closure. (C.A. App. 237-238).[1] The announcement of the hospital's closing was the result of a determination by the Department of Defense that the facility was "excess" to the requirements of all branches of the military. Following congressional clearance, the Army reported the hospital to the General Services Administration ("GSA") as "excess" to Defense needs (C.A. App. 228-231).

The facility was offered by GSA to all other federal agencies in accordance with the Federal Property and Administrative Services Act of 1949 ("Federal Property Act"), 63 Stat. 378, 40 U.S.C. §471 (1949). When there was no federal requirement for the hospital, GSA declared it "surplus" to the needs of the federal government. Ultimately it was assigned to HEW for disposal to a health or educational institution as authorized by the Federal Property Act (C.A. App. 231).

The President's Economic Adjustment Committee ("EAC") was deployed to address governmental concern over the economic impact of the closure on the Phoenixville community.[2] The EAC met with community representatives to develop a viable reuse plan for the property (C.A. App. 230-231). In mid-1976 the EAC received a report from the local use committee recommending the college as the transferee of a 76.80 acre portion of the surplus property (C.A. App. 231).

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[1] References to the Appendix filed in the court of appeals are designated "C.A. App. ____."

[2] The Phoenixville community was about to be left with a white elephant in the form of 181 acres with many unoccupied buildings. Over 700 jobs were to be lost (C.A. App. 231, 237).

The college was granted a "public benefit allowance" of 100% of the value of the property, pursuant to which the college must earn its right to use and to own the property by the bestowal of educational benefits for 30 years, 76 Stat. 805, 40 U.S.C §484(k)(1)(C) (1962). The Government retains a reversionary interest during that period which it may exercise upon finding a violation of the college's covenants (C.A. App. 267-68). The deed was executed on August 3, 1976; thereafter the college relocated its campus, renovated the property at substantial cost and began its present occupation of a portion of the acreage transferred.

Americans United learned of the transfer by a news release (Doerr Dep. 44). In December 1976, the organization and four of its staff members sued the Government in the United States District Court for the District of Columbia. The action was transferred to the Eastern District of Pennsylvania and, on July 12, 1977, an amended complaint was filed naming the college as a codefendant.

The Amended Complaint describes the taxpayer and citizen status of the individuals (J.A. 10, ¶3-6) and pleads the representational status of the organization, alleging that each of its taxpayer members is affected as though each were a separate individual plaintiff in the action (J.A. 10, ¶2). The college is alleged to be a "theological school" to which the transfer of federal property is unlawful under the first amendment (J.A. 11, ¶¶9, 12). The relief sought is a declaration that the transfer was illegal, recission, injunctive relief and attorneys' fees (J.A. 12).

Americans United claims to be one of the principal organizations in this nation which defends and promotes religious liberty (C.A. App. 155); it purports to speak on behalf of some "90,000 members nationwide" (J.A. 10, ¶2). Litigation is one of the two ways in which Americans United fulfills its organizational purpose. Education is the other activity which fulfills its organizational goals (C.A. App. 150).

Following discovery[3] the college moved for summary judgment (J.A. 181) and the Government moved to dismiss pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure (J.A. 185). Both motions addressed solely the issue of respondents' standing.

On December 15, 1978, the district court granted the motions. The court found that the plaintiffs failed to meet the *Flast* criteria for taxpayer standing since the Federal Property Act is an exercise of the property power of the Constitution, and not an exercise of the taxing and spending power. The court also held that plaintiffs' injury was neither actual nor concrete, but was a generalized grievance. The complaint was dismissed (Pet. App. A42).

The organization and the individuals appealed and on April 8, 1980, the court of appeals filed three opinions (majority, concurring and dissent) and, in reversing the district court, held that both Americans United and the individuals had standing to maintain the claim.

In its majority opinion, the court of appeals:

(a) agreed with the district court that the respondents lacked standing to sue under *Flast;*

(b) held that a claim (never alleged in the district court) to a "shared individuated right" to a government that does not establish religion is a direct or concrete injury warranting Article III standing;

(c) stated that citizens who hold a separationist view of the Establishment Clause have a special interest which dis-

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[3] Interrogatories addressed to the Government and to the college were answered. The college's interrogatories and request for production of documents were answered and it took depositions of the individuals. Affidavits were filed in connection with the college's Motion for Summary Judgment. The foregoing, and the pleadings, constitute the record.

tinguishes them from the citizenry at large and justifies standing; and

(d) concluded that at least some constitutional guarantees are enforceable at the demand of every citizen.

The college filed a Petition for a Writ of Certiorari on August 30, 1980; Americans United, the individuals and the Government filed briefs in opposition. The writ was granted on February 23, 1981.

SUMMARY OF ARGUMENT

Article III's case or controversy requirement is met only by plaintiffs who allege a "personal stake" in the outcome of the dispute. *Flast* v. *Cohen*, 392 U.S. 83 (1968) authorized taxpayer standing to challenge congressional action taken pursuant to the taxing and spending power of the Constitution, Article I, §8. The Federal Property Act is not an exercise of the taxing and spending power; rather that legislation is empowered by the Property Clause of the Constitution, Article IV, §3, cl. 2. Respondents fail to meet the *Flast* standing criteria, and both lower courts so held.

The court of appeals concluded, *Flast* notwithstanding, that the individuals and the organization had standing to sue as citizens who relied on their unarticulated interest as "separationists" and whose main concern was adherence to the goal of separation of church and state. Standing is predicated on the citizen-separationists' "shared individuated right" to a government that does not establish religion, which the lower court said is within the zone of interests of the Establishment Clause. A "shared individuated right" is not injury in fact. The concept conflicts with this Court's opinions on the standing doctrine and the record does not indicate that the individuals or the organization have suffered any injury as a result of the transfer of surplus federal property to the college.

Three types of personal stake have been recognized in Establishment Clause challenges: traditional injury, taxpayer injury and direct offense. Never has a plaintiff been granted standing solely on the basis of holding separationist views.

The connection between the respondents' claim and the transfer of the federal property is too remote and attenuated to constitute cognizable injury. All prior Establishment Clause challenges have been brought by plaintiffs whose personal stake was proximately connected with the governmental action challenged. These respondents are not directly involved with this transfer. The result is litigation which lacks the specificity and concreteness upon which this Court has insisted in its standing pronouncements, particularly in Establishment Clause cases. That respondents lack a particularized involvement with the specific government project challenged means that they seek no more than to air a generalized grievance about government.

Separationism is a political philosophy and not a religious belief. Thus, it cannot be a "spiritual stake" within the zone of interests of the Establishment Clause.

The court of appeals' drastic restatement of standing jurisprudence cannot be confined to Establishment Clause challenges. If accepted, any citizen will be able to utilize a federal court for debate with the sovereign over all manner of government choices and action.

The Third Circuit has adopted citizen standing despite this Court's consistent rejection of its theory and application. Combining "citizen" with "separationist" adds nothing more than a "hyphen" to this Court's sound reasons for rejecting any theory of citizen standing.

To adopt the court of appeals' standing hypothesis deprives the truly injured litigant of the right to complain about issues which affect him, in favor of a remote plaintiff who seeks to air a generalized grievance.

The novel and unprecedented grant of standing to these respondents violates the doctrine of separation of powers. It tilts the apportionment of power to the judiciary, offering the potential for intrusion on the powers of the other two coordinate branches of government.

ARGUMENT

I. Respondents Do Not Challenge Congressional Action Taken Pursuant To The Taxing And Spending Power Of The Constitution; Thus They Do Not Meet *Flast* Criteria.

While very few propositions about the doctrine of standing can be advanced with any confidence in their accuracy, there are two postulates which are fundamental and provoke no rebuke from prior decisions or the scholars. They are first, that the Article III "case or controversy" requirement is jurisdictional and constitutionally compelled for access to federal courts; and second, that to meet the case or controversy requirement the plaintiff must have a "personal stake" in the dispute that results from "injury in fact." *Schlesinger* v. *Reservists Comm. To Stop The War*, 418 U.S. 208, 218 (1974); *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). In addition to these constitutional requirements, the Court has recognized the importance of discretionary prudential requirements. *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979); *Warth* v. *Seldin*, 422 U.S. 490, 498 (1975).

The more difficult tasks are to formulate precise standards for this personal stake requirement and to specify the contours of the additional policy constraints. This Court has on numerous occasions stated that to constitute personal stake the injury in fact must be immediate and direct, as opposed to remote, speculative, or attenuated. It must be the sort of injury that courts have traditionally found themselves suited to redress. *Baker* v. *Carr*, 369 U.S. 186, 198-99 (1962). Furthermore, the plaintiff must allege his own interests, rather than the interests of parties not before the court. *Tileston* v. *Ullman*, 318 U.S. 44, 46 (1943); *cf. Griswold* v. *Connecticut*, 381 U.S. 479 (1965). The plaintiff's interest, however, cannot be purely "public" or ideological; a mere interest in an issue, no matter how longstanding, is not enough. *Sierra Club* v. *Morton*, 405 U.S. 727, 739 (1972). The essence of Article III is that the courts are not to render advisory opinions. *Muskrat* v. *U.S.*, 219 U.S. 346 (1911).

The basic principles of standing are enunciated in this Court's premiere decision in *Flast* v. *Cohen*, 392 U.S. 83 (1968), which, like the present case, involved a challenge based upon the Establishment Clause of the Constitution. *Flast* explained that it was necessary to glance briefly at the substantive issues in order to determine whether they are issues which the plaintiff is entitled to raise. *Id.* at 102. Yet, the merits of the substantive claim are not the proper subject of the court's attention while resolving the threshold standing question. *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208, 225 (1974). As in *Flast*, the issues here are Article III issues and not first amendment issues.

Most importantly, *Flast* holds that the injury-in-fact requirement of Article III is satisfied only by a taxpayer whose constitutional challenge meets two nexuses or logical links. First, there must be a nexus between plaintiff's status as a federal taxpayer[4] and the type of legislative enactment challenged. *Flast* at 102. Second, the taxpayer must link his federal taxpayer status to the nature of the asserted constitutional infringement. This is accomplished when the challenge to congressional action is to the taxing and spending power embodied in Article I, §8 of the Constitution. *Id.* at 103. Under *Flast*, the Establishment Clause is a limitation on the taxing and spending power and, as such, allows a taxpayer to challenge a federal statute on Establishment Clause grounds if the taxing and spending power is invoked. The flaw in respondents' claim, which is fatal to a grant of *Flast* standing, is their failure to challenge an exercise of congressional power under

[4] The amended complaint pleads the loss to Americans United's taxpayer membership in this way: "Each of these taxpayer members will be affected as though they were each a separate individual plaintiff in this action, and each individual member would be deprived of the fair and constitutional use of his (her) tax dollar for constitutional purposes in violation of his (her) rights under the First Amendment of the United States Constitution" (J.A. 10, ¶12).

the taxing and spending clause; unlike *Flast*, the complained of activity finds its constitutional genesis in the Property Clause.

The Federal Property Act is an exercise of congressional power under the Property Clause, not an exercise of the taxing and spending power. The legislative history of the Act and the judicial opinions construing it identify Article IV, §3, cl. 2 as the constitutional authority for its enactment. S. REP. No. 475, 81st Cong., 1st Sess. (1949), *reprinted in* 2 U.S. CODE CONG. SERV. 1475-1476; *U.S.* v. *Cassiagnol*, 420 F.2d 868, 876 (4th Cir. 1970), *cert. denied*, 397 U.S. 1044 (1970); *Kern Copters, Inc.* v. *Allied Helicopter Services, Inc.*, 277 F.2d 308, 313 (9th Cir. 1960). The Property Clause states:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.
> U.S. CONST. art. IV, §3, cl. 2.

This Court has acknowledged that the Property Clause gives Congress plenary power over the disposal of federal property, *Alabama* v. *Texas*, 347 U.S. 272, 277 (1954) ("The responsibility of Congress is to utilize the assets that come into its hands as sovereign in the way that it decides is best for the future of the Nation."); *Ashwander* v. *TVA*, 297 U.S. 288 (1936); *U.S.* v. *Gratiot*, 39 U.S. (14 Pet.) 526 (1840), including the power to make "all needful Rules and Regulations respecting" property owned by the United States, *Kleppe* v. *New Mexico*, 426 U.S. 529 (1976)). Legislative history of the Act[5] reinforces its primary purpose as the efficient disposal of property no longer needed by the government, rather than as a public benefit or aid statute.

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[5] Congress' stated purpose in enacting this legislation was "to simplify the procurement, utilization and disposal of Government property" with the intention of "increased efficiency and economy of operation of the Federal Government." S. REP. No. 475, 81st Cong., 1st Sess. (1949), *reprinted in* 2 U.S. Code Cong. Serv. 1475, 1476.

Since plaintiffs failed to meet the *Flast* criteria, the district court correctly concluded that neither the organization nor the individuals had taxpayer standing (Pet. App. A43). The court of appeals agreed and that judgment is not questioned here.

II. Standing Cannot Be Predicated On A "Shared Individuated" Or "Personal Constitutional" Right To A Government That Does Not Establish Religion Without Overruling Every Major Standing Decision Of This Court.

Realizing that plaintiffs did not qualify as taxpayers, the court of appeals enunciated a novel theory of Establishment Clause standing to avoid *Flast's* impact. *Americans United for Separation of Church and State* v. *Department of Health, Education and Welfare*, 619 F.2d 252, 254 (3d Cir. 1980) [hereinafter cited as *Americans United*]. It first rechristened their interests "separationist", instead of "taxpayer":

> Plaintiffs have no reason to expect, nor perhaps do they care about, any personal tax savings that might result should they prevail. The crux of the interest at stake, the plaintiffs argue, is found in the Establishment Clause, not in the supposed loss of money, as such. As a matter of primary identity, therefore *the plaintiffs are not so much taxpayers as separationists, and their main concern is not a reduction in taxes, but their declared goal of separation of church and state. Americans United*, 619 F.2d 252, 261 (3d Cir. 1980) (Emphasis supplied).

The lower court used the "zone of interests" test which was formulated to interpret the "person aggrieved" language of the Administrative Procedure Act, 80 Stat. 392, 5 U.S.C. §702 (1966). That federal statute and the zone of interests test, which was designed for statutory and administrative agency challenges, cannot be employed to expand the scope of the Article III case or controversy requirement. *See, Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 100 (1979). Yet, Judge Adams applied the test to the Establishment Clause and found that the concern of the organizational and individual respondents for separation of church and state was "arguably within the zone of interests protected by the Establishment Clause of the First Amendment . . . ." *Amer-*

icans United, 619 F.2d at 254. Even assuming the test could be correctly applied to the Establishment Clause, a separationist's concern, which is no more than the pursuit of a political philosophy, cannot be within any zone of interests protected by that Clause.

By far the most striking aspect of the majority's reasoning is its unheralded concept of a "shared individuated right" or "individuated interest" in the separation of church and state, *id.* at 261, 258. To be individuated, the court wrote, "'an interest need only be expressible in terms of the individual litigant's concrete satisfaction or experiences; but such satisfactions or experiences need not be *unique* to the litigant'." *Id.* The shared individuated interest in this case was the injury to plaintiffs' personal constitutional right of separation of church and state:

> The heart of plaintiffs' complaint is that the challenged governmental action caused 'injury in fact' to their shared individuated right to a government that 'shall make no law respecting the establishment of religion'. *Americans United,* 619 F.2d at 261.

Plaintiffs were therefore deemed to have suffered injury "within the zone of interests protected by the Establishment Clause." *Id.* at 266.

This conception of "personal stake" violates fundamental standing principles. Article III demands injury. Judicial descriptions of what will constitute Article III injury have been adjusted from common law concepts of property loss to interests or rights of the plaintiff affected by the increasing reach of governmental action in modern times. Yet, this Court has never retreated from a notion of injury which is direct as differentiated from remote. The literature of standing has yielded injury formulations that speak of "distinct and palpable injury" *Gladstone, Realtors* v. *Village of Bellwood,* 441 U.S. 91, 100 (1979); *Warth* v. *Seldin,* 422 U.S. 490, 501 (1975), and "particular concrete injury" *U.S.* v. *Richardson,* 418 U.S. 166 (1974). Federal courts serve only personal

sufferers, or "direct victims," *Gladstone*, 441 U.S. at 99, 100, who are faced with actual injury. *Linda R.S.* v. *Richard D.*, 410 U.S. 614, 617 (1973).

A "shared individuated" or a "personal constitutional" right, *Americans United*, 619 F.2d at 261, 265, to a government which does not violate its Constitution fails to meet any conception of injury heretofore considered by this Court. Respondents advance no claim of personal suffering peculiar to themselves, *Gladstone*, 441 U.S. at 100.

The record does not support the court of appeals' conclusion. Despite this Court's admonition that "it is the responsibility of the complainant clearly to allege facts" to demonstrate a standing claim, not much can be gleaned from the complaint beyond the individuals' allegations that they are citizens and taxpayers.[6] *Warth*, 422 U.S. at 518. Respondents were given the opportunity through discovery to "particularize" the allegations of the Amended Complaint. *Warth*, 422 U.S. at 501. In connection with the district court's ruling on the college's Motion for Summary Judgment, the depositions and answers to interrogatories were considered. In granting the motion, the district court apparently felt that the respondents' standing did not appear and dismissed the Amended Complaint (as required by *Warth*, 411 U.S. at 502). Relabelling the plaintiffs' injury as primarily affecting their separationist beliefs indicates that the court of appeals did not consider the record.

The respondents' sworn testimony is vague about the challenge they mount and the nature of their injury. Some viewed their lawsuit as redressing agency action rather than challenging any statute. *See, e.g.*, Settembrini Dep. 27-29; Binns Dep. 24-30, and Doerr Dep. 23, "I'm not complaining about any law passed by Congress."

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[6] *See, Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 110 which is critical of conclusory and abbreviated allegations in a complaint where standing is at issue.

One respondent saw his injury as exclusively taxpayer loss. He felt that federal tax funds "had been given away and therefore [he had] to make up the difference" (Gunn Dep. 12). Most agreed that their loss was shared in common with other taxpayers (Doerr Dep. 35, Binns Dep. 31). Mr. Settembrini testified that his injury "could be defined as general, it could also be defined as specific" (Settembrini Dep. 13-14).

None mentioned "injury" to separationist beliefs.[7] Doerr considered his injury the improper disposal of government property: "It belongs to the public and I'm part of the public" (Doerr Dep. 13). Respondent Settembrini objected to the transfer on "philosophical" grounds: "In my opinion, no Federal property should be dispersed (sic) to an institution which is not publicly owned" (Settembrini Dep. 12). Respondent Binns complained that the government had given away property of value which belonged to the class of taxpayers of which he was a member (Binns Dep. 31).

Aside from their convictions that their federal taxes might have been lower by an unknown amount and that the government had deprived the public of something of value, no respondent could explain how he might personally have suffered.

To reach its conclusion that plaintiffs could have standing on such facts, the court below adopted a false reading of this Court's opinion in *Flast* v. *Cohen*, 392 U.S. 83 (1968). It was suggested that the reason for *Flast's* reliance on its plaintiffs' taxpayer status was a "perceived limitation in the pleadings and nothing else," meaning that plaintiffs there had only al-

[7] The majority concluded without explanation that the organization's historic commitment to the goal of separation was identical to the individuals' concern. The individual respondents' connection to the organization by means of a paycheck proves employment, but certainly does not support the lower court's assumption that the organization's historic goals are personal to or embraced by the individuals.

leged taxpayer status,[8] *Americans United*, 619 F.2d at 262. If this had been the reason, the proper response in *Flast* would have been to require plaintiffs to amend their pleadings as this Court did in *Sierra Club* v. *Morton*, 405 U.S. 727, 735 n. 8 (1972); *see also*, *Warth* v. *Seldin*, 422 U.S. 490, 501 (1975). Or perhaps it could have inferred, as the court of appeals did here, that those who mount Establishment Clause challenges are undoubtedly moved by separationist injury, even if it is nowhere mentioned in the complaint. The majority's claim that "[t]he underlying justification for according standing in *Flast*," *Americans United*, 619 F.2d at 262, was recognition that all citizens, taxpayers or not, may challenge expenditures on Establishment Clause grounds is simply mystifying.

The court below was correct in one regard. To constitute a personal stake, the injury need not be economic, but may instead be aesthetic or spiritual. *Americans United*, 619 F.2d at 257, citing *Sierra Club* v. *Morton*, 405 U.S. 727 (1972); *see also*, *Ass'n of Data Processing Serv. Org.* v. *Camp*, 397 U.S. 150, 154 (1970). On this premise the entire argument depends, for the "injury" to plaintiffs' separationist beliefs was concededly not an economic one. But the chain of reasoning that followed the correct initial premise was erroneous. The logic seemed to run: some non-economic injury constitutes personal stake, this injury is non-economic, therefore it constitutes personal stake. But, the purpose of a long line of precedents is precisely to define which non-economic injuries confer standing and which do not. *Sierra Club*, the very case upon which the court relied for its initial premise, struggled with the problem of differentiating intangible, but consitutionally cognizable in-

[8] The majority's supposition that this Court was limited to according taxpayer standing by the pleadings before it in *Flast* is in any event erroneous because the complaint filed in *Flast* variously identified those plaintiffs as citizens, voters, resident taxpayers of New York and a parent of school children attending public school. *Flast* v. *Gardner*, 271 F. Supp. 1 (S.D.N.Y. 1967); *See*, J.A. 10, ¶2 (Amended Complaint describing parties seeking standing here).

terests from generalized grievances about the nature of government. The careful formulation in *Flast* itself was wasted effort if the court below was correct that Establishment Clause standing is available generally.

The majority therefore erred, not in its premise that non-economic or even spiritual stake may be sufficient injury to raise an Establishment Clause claim, but rather in concluding that the interest asserted by these plaintiffs is a non-economic stake that qualifies, for Establishment Clause purposes, as personal.

Besides its strained reading of *Flast*, the court below offered several other justifications for conferring standing. Judge Adams alluded at several points to the unique importance of Establishment Clause guarantees, which in his view exempt this case from the general prohibition against citizen standing. This view no doubt led the court to phrase an oblique and ambiguous reference to the relationship of the merits to the plaintiffs' claim when evaluating standing. *Americans United*, 619 F.2d at 265. Standing analyses have considerably less involvement with the merits of the claim than the court of appeals implies. The court is guilty of having come to "premature evaluation of the merits of respondents' complaint" shifting the focus from the party. *Schlesinger*, 418 U.S. at 225. *See also, Warth* v. *Seldin*, 422 U.S. 490, 500 (1975) ("Standing in no way depends on the merits of plaintiff's contention . . .").

The court of appeals simply has not applied any of this Court's standing jurisprudence. It has emptied Article III of any significance whatsoever in its drive to find standing for a citizen separationist, a theory which does not survive analysis in any event.

III. "Personal Stake" For Establishment Clause Claims Requires A Plaintiff To Have A Proximate Connection To The Governmental Action Challenged By Direct Involvement With The Specific Project; These Unaffected Citizens Seek A Federal Court To Debate Their Separationist Ideology.

A. "Personal Stake" In Establishment Clause Cases Has Been Well Defined By This Court; The Respondents Fail To Fall Within Any Acknowledged Categories.

This Court has recognized only three distinct types of "personal stake" in Establishment Clause cases: economic loss, taxpayer injury, and direct offense or affront to one's religion-free environment. None of these categories has included separationism or the naked right to freedom from the existence of constitutional violations. The injury alleged by Americans United is too remote and attenuated to fall into any of the categories of injury recognized by this Court as conferring a personal stake to raise Establishment Clause claims.

McGowan v. *Maryland*, 366 U.S. 420 (1961) is typical of the traditional losses which have been recognized in an Establishment Clause context. There, employees of the store which was operating in violation of Maryland's Sunday closing laws were indicted, convicted and fined; they defended in part on the grounds that the laws violated the Establishment Clause. This Court accorded them standing to raise that challenge. *Id.* at 430. In *Two Guys from Harrison-Allentown* v. *McGinley*, 366 U.S. 582, 592 (1961) a corporation's economic loss was sufficient for standing to challenge Pennsylvania's Sunday closing laws on Establishment Clause grounds. *See also, Board of Education* v. *Allen*, 392 U.S. 236, 239 n.5 (1968) which was a state law challenged by school board members on Establishment Clause grounds; standing was premised on the coercive nature of plaintiffs' dilemma: either to obey a law which they believed to be unconstitutional or to disobey a law and be faced with expulsion from their positions. Similarly, in the present case, a disappointed applicant for the property could probably challenge the transfer on Establishment Clause grounds. However, standing would be predicated on plaintiff's economic loss, and not on his right to live under a government which does not establish religion.

Second, a direct offense to the plaintiff's right to live and learn in a religion-free environment has been held to constitute a personal stake. This Court observed in a challenge to

school Bible reading: "It goes without saying that the laws and practices involved here can be challenged only by persons having standing to complain." Standing was appropriate because ". . . school children and their parents . . . are directly affected by the laws and practices against which their complaints are directed." *Abington School District* v. *Schempp*, 374 U.S. 203, 225 n.9 (1963); *See also, Engel* v. *Vitale*, 370 U.S. 421 (1962), (parents of school children permitted to challenge classroom reading of state sponsored school prayer.) Finally, taxpayer loss is recognized as "personal stake". The plaintiffs in this case have already been shown to fail the test established by *Flast* v. *Cohen*, 392 U.S. 83 (1968).

Common to all three types of plaintiffs is the close, proximate connection between the "personal stake" and the governmental action challenged. In the economic injury cases a direct and immediate practical impact is obvious. Further, all taxpayer challenges to federal action have been brought by taxpayers in the vicinity of the allegedly unconstitutional project.[9] *Flast* involved a challenge filed initially in New York district court by taxpayers residing in New York City who wished to challenge the federal program's operation there.[10] *Tilton* v. *Richardson*, 403 U.S. 672 (1971), another Establishment Clause challenge to federal action, was brought in Connecticut district court by Connecticut residents challenging grants to specific Connecticut colleges. Personal stake, and therefore

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[9] In challenges to actions taken by states, the proximity requirement is satisfied because the action is brought by a state taxpayer. *See, e.g., Meek* v. *Pittenger*, 421 U.S. 349 (1975); *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971).

[10] The Supreme Court also noted that one plaintiff had children in New York schools, but deemed this extra allegation unnecessary. *Flast*, 392 U.S. 83, 85 n.1. This fact would be significant if the underlying claim were a direct affront to their right to public education in a religion-free environment, as in *Schempp*, but the underlying claim was instead expenditure of public monies.

standing to challenge government action, depends upon direct involvement with and proximity to the alleged harm.

Direct offense cases also illustrate the necessity for proximate plaintiffs. In *Schempp* and *Engel* plaintiffs were parents of school children directly confronted each day with the consequences of the government's choice to sponsor one set of religious beliefs. *See also, Stone* v. *Graham,* 101 S. Ct. 192 (1980) (*per curiam,* reversing Kentucky Supreme Court decision rejecting challenge by school children's parents to posting of Ten Commandments). This Court has seen only one such challenge that did not involve a direct offense to an individual's right to a religion-free environment, and for that reason it held the personal injury requirement unsatisfied. *Doremus* v. *Board of Education,* 342 U.S. 429 (1952) (challenge to Bible reading dismissed as moot because school children had graduated).[11] *Schempp,* upon which the majority below relies, does not, therefore, confer standing upon challengers as remote as the plaintiffs here.

Americans United and the individual plaintiffs have suffered no direct offense. Their connection to the asserted injury is too remote and too attenuated to constitute injury. Americans United operates at a distance, prefers to litigate at a distance, and suffers if at all in only the most indirect and attenuated way. This Court can only speculate about the impact on distant plaintiffs of the transfer of this federal property. But distance is only part of the problem. How are their lives affected? What religion-free environment, such as a classroom, is disturbed by direct daily confrontation of the governmental action challenged here? None. Unless this organization and these individuals would have had standing to complain in *Schempp* about Bible reading in the classrooms of

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[11] *Doremus* was distinguished on these grounds in both *Abington School Dist.* v. *Schempp,* 374 U.S. 203, 225 n.9 (1963) and *McGowan* v. *Maryland,* 366 U.S. 420, 429 n.8 (1961).

Abington, Pennsylvania, they have no standing to complain about a transfer of surplus property in Phoenixville, Pennsylvania. In a true direct offense case, the plaintiff should not have to go out of his way to experience the insult's sting.

B. Respondents Do Not Possess A Personal Stake Because They Lack Proximate Connection With The Action Challenged; Since They Are Not Directly Involved With The Property Transfer The Court Is Deprived Of The Specificity Required In Article III Litigation.

Americans United has no greater involvement[12] in the transfer to Valley Forge Christian College than in any other grant it might happen to learn of by news report. These plaintiffs are undoubtedly interested in obtaining a far-reaching advisory opinion enunciating general principles prohibiting transfers of government property to institutions they believe to be primarily sectarian[13]. But their lack of involvement with the specific transaction violates the requirement in *Warth* v. *Seldin* that "the initial focus should be on a particular pro-

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[12] The record portrays in dramatic fashion the lack of anything more than litigation motivated by principle and not by harm. The individual plaintiffs, full-time employees and members of the organization's executive staff, initially decided to institute suit against the Government alone in the District of Columbia in December, 1976, after its executive director and his attorney concluded that the "sectarian" nature of the college disqualified it from receiving federal property (Gunn Dep. 36-38).

[13] The organization's conclusion that the college is sectarian and an ineligible transferee under the first amendment portrays the erroneous premise of the absolute separationist position. This Court has never held that being sectarian or church-related disqualifies an institution from any form of governmental assistance. *See e.g., Walz* v. *Tax Comm.* 397 U.S. 664, 679 (1970); *Zorach* v. *Clauson*, 343 U.S. 306, 312 (1952); *See also, Roemer* v. *Bd. of Public Works of Maryland*, 426 U.S. 736 (1976).

ject." 422 U.S. at 508 n. 18.[14] *See also, Arlington Heights.* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 262 (1977). Even where there is a demonstrated concern with the general issues and even where non-economic interest suffices to create personal stake, the plaintiff must allege and be prepared to prove involvement with the precise activity alleged to be illegal. Americans United's claim is no more personal or individualized than a claim by a conservationist club that its members are harmed by development of a parkland which the members do not allege they use. *Sierra Club* v. *Morton*, 405 U.S. 727, 735 (1972) (aesthetic interest may be sufficient but "party seeking review must be himself among the injured").

Focusing on a particular project ensures the "necessary specificity . . . [that may be lacking] where a taxpayer seeks to employ a federal court as a forum in which to air his generalized grievances about the conduct of government." *Flast* v. *Cohen*, 392 U.S. 83, 106. One purpose of the standing limitation is "assur[ing] that concrete adverseness . . . upon which the court so largely depends for illumination of difficult constitutional questions." *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). Article III therefore compels dismissal of suits that "are not pressed before the Court with that clear concreteness provided when a question emerges precisely framed and necessary for decision. . . ." *U.S.* v. *Fruehauf*, 365 U.S. 146, 157 (1961). Absent such concrete adverseness, constitutional issues cannot be wisely decided. *See*, Frankfurter, *A Note on Advisory Opinions*, 37 HARV. L. REV. 1002, 1024 (1924).

In addition to framing issues clearly for correct judicial resolution, specificity helps to ensure that the precedents this

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[14] *See also, Warth*, 422 U.S. at 507 (distinguishing cases that challenged particular projects); cf. *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 n.26 (1979) (distinguishing between residents who have standing to challenge racially discriminatory "steering" practices in their vicinity from non-residents, who must demonstrate injury in fact some other way).

Court establishes will be narrowly drawn in accordance with traditional notions of "the nature of the judicial process." *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 n.16 (1976). A specific statement of the plaintiff's actual "stake" results in a delineation of issues that avoids unwarranted anticipation of issues not necessarily presented. *Schlesinger* v. *Reservists Comm. To Stop the War*, 418 U.S. 208, 221-222 (1974); *Ashwander* v. *TVA*, 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring). An overly broad opinion sweeps into the adjudication the rights of individuals who are not before the court and who are not necessarily situated similarly to the litigant who seeks to assert their claims.[15] *O'Shea* v. *Littleton*, 414 U.S. 488 (1974); *Bailey* v. *Patterson*, 369 U.S. 31 (1962); *See also, Simon* v. *Eastern Kentucky Welfare Rts. Org.* 426 U.S. 26, 40 n.20 (1976). The prudential limitations that this Court has consistently recognized prohibit such results. *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975) (collecting cases).

Specificity is particularly important in Establishment Clause cases since the wall of separation is not absolute but allows for "play in the joints," *Walz* v. *Tax Commission*, 397 U.S. 664, 669 (1971). The outcome is always dependent upon the nature of the particular recipient and the precise facts of the program in question. In *Tilton* v. *Richardson*, 403 U.S. 672 (1971), which declined to rely upon a "composite profile" reflecting the characteristics of sectarian colleges generally, the Court said:

> Individual projects can be properly evaluated if and when challenges arise with respect to particular recipients . . . . 403 U.S. at 682.

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[15] Brilmayer, *The Jurisdiction of Article III: Perspectives on the Case or Controversy Requirement*, 93 HARV. L. REV. 297, 308 (1979) [hereinafter cited as Brilmayer] (plaintiff "should be required to state [his claim] with specificity so that no overly broad precedent will threaten the rights of persons in different positions.")

Similarly, when the constitutionality of the statute involved in *Flast* was finally litigated in *National Coalition for Public Education and Religious Liberty* v. *Harris*, 489 F.Supp. 1248, 1252 (S.D.N.Y. 1980), the New York district court refused to engage in speculation about whether the statute was facially unconstitutional due to its application in schools in other parts of the United States, stating that "a federal court must not issue decisions based on hypothetical situations." Instead, it based its decision upon an enormous body of accumulated evidence concerning operation of the statute in the New York schools, adding that "[t]he Court's constitutional ruling is, of course, confined to the fact situation specifically presented here." *Id.* at 1253.

Apparently seeking an advisory opinion about general limitations on transfers of surplus property, Americans United attempts to "[make] the actual defendant a pawn to be manipulated on a chess board larger than his own case." *Lenhard* v. *Wolff*, 443 U.S. 1306, 1312 (1979). The college is the pawn-victim called now to defend a right to retain its college by a remote non-involved stranger.

Sierra Club recognizes that intangible interests will in some instances suffice. But they must be the interests of the person requesting judicial intervention and must amount to more than an abstract concern with the legal issues raised. Since Americans United has no particular concern with this specific project, its Establishment Clause claim is too remote to support a personal claim of its own. The "harm" does not constitute pocketbook injury, direct affront, or taxpayer grievance because it is simply too attenuated. *Simon* v. *Eastern Kentucky Welfare Rts. Org.*, 426 U.S. 37 (1976); *Linda R. S.* v. *Richard D.*, 410 U.S. 614 (1973).

What then is the "spirtual stake" to which the court of appeals refers in writing about the plaintiffs' claim? The record does not support any construction which would permit this Court to hold that the individuals' *spiritual* beliefs had been

affronted; it is at most their ideological beliefs.[16] As separationists they complain about government activity from which they are detached and which has no impact. Separationism is not a religious belief within the "zone of interests" of the first amendment.[17] A Catholic or Jew may be a separationist; conversely an atheist or an agnostic may believe that the government should promulgate his own convictions. Separationism is a political hypothesis that addresses constitutional priorities; it is precisely the sort of interest that this Court's Article III decisions have explicitly and unambiguously held insufficient.[18]

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[16] In fact, this litigation was not brought by members who sought to vindicate the organization's self-ascribed goals, but by its paid employees. The instant litigation is no less an example of nonrepresentative public action than *Health Research Group* v. *Kennedy*, 82 F.R.D. 21 (D.D.C. 1979), since Americans United did not act on its members' initiative, nor did any member feel injured sufficiently to prompt him to join in the suit or communicate with the organization about it (Gunn Dep. 50). That the employees would have no difficulty "finding" other plaintiffs is more disturbing than curative (Doerr Dep. 12).

[17] In fact, if separationism were a religious belief, the first amendment might itself be accused of adopting a religious precept, which it does not. Another consequence of recognizing a citizen-separationist "spiritual" stake within the meaning of the first amendment, and of allowing challenges by organizations with long-standing separationist commitments, is involving the courts in determining the organization's sincerity on the subject of religious principle. The Court has consistently declined to engage in such inquiry, which would be necessary if ideological groups were to be evaluated in terms of the existence of such a stake. *Cf. Thomas* v. *Indiana Employment Security Division Board*, 49 U.S. L.W. 4343 (April 6, 1981). But separationism is a political philosophy, whose tenets are described in F. SORAUF, THE WALL OF SEPARATION (1976); *see particularly*, the chapters entitled "The Separationist Group" at 30 and "Goals and Strategies of the Separationist Groups" at 91.

[18] Plaintiffs may have an interest in the legal issue but not in the case itself. The majority's use of the phrase "'personal stake' in the

C. The Third Circuit's Reliance Upon "Shared Individuated Rights" Invites Article III Courts To Render Advisory Opinions About Citizen Grievances And Undermines Standing Completely.

The court below was apparently of the view that its radical reconstruction of standing law might be limited to Establishment Clause challenges. *Americans United*, 619 F.2d 252, 262. In fact, however, any theory capable of transforming an abstract concern about government illegality into a personal injury has potentially infinite reach. The majority opinion allows as much:

> The claim that individual citizens are entitled to judicial enforcement of their rights does not, of course, tell us exactly what Constitutional rights individuals have against the government. *Id.* at 265.

Precisely those who urge the Court to abandon the *Marbury* model of adjudication argue that "a part of the constitutional guarantees of freedom of speech and religion . . . [is] a right to complain of the existence of unconstitutional legislation." Monaghan, *Constitutional Adjudication: The Who and When*, 82 YALE L.J. 1363, 1369 (1973). This potential for abuse haunted Justice Harlan dissenting in *Flast*, 392 U.S. at 129 n. 18, and indeed, once the *Flast* test is cut loose from its moorings in the taxing and spending power, these problems materialize at once. Judge Adams may have been correct in stating that this Court's pronouncements on standing are not entirely clear,[19] but the one point on which this Court has never wavered is

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present controversy" is telling. *Americans United*, 619 F.2d 252, 254. The personal stake requirement mandates that a plaintiff have a personal stake not in litigating but in the outcome since it is only if a plaintiff's injury is likely to be redressed by the requested relief that the injury components of standing are met. *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). *Duke Power Co.* v. *Carolina Environmental Study Grp., Inc.*, 438 U.S. 59, 74 (1978).

[19] While the *Flast* formulation has been criticized as "artificial" and "insupportable," Bogen, *Standing Up for Flast: Taxpayer and*

the issue here. Pique at governmental activity cannot, of itself, constitute injury in fact.

Citizen standing has never been recognized by this Court. *U.S.* v. *Richardson*, 418 U.S. 166 (1974); *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208 (1974); *Ex parte Levitt*, 302 U.S. 633 (1937); *Frothingham* v. *Mellon*, 262 U.S. 447 (1923). In the two major citizen cases in which standing to assert a constitutional violation was addressed, *Richardson* and *Schlesinger*, this Court declined to permit a complainant with no concrete injury to require the Court to rule on an important constitutional issue. In *Schlesinger*, this Court rejected a challenge to the Incompatibility Clause of Article I, §6, cl. 2 by an organization and its individual members who sued as representatives of reservists not members of Congress, taxpayers and citizens. The Court declared that a mere interest in litigating is not enough.[20] 418 U.S. at 226. *Richardson* similarly acknowledged that an undifferentiated preference is not injury. 418 U.S. 166, 177 (1974). In *Richardson*, a federal taxpayer sought to compel the publication of the CIA secret budget pursuant to Article I, §9, cl. 7. In addressing the issue of standing, the Court was faced with the question whether a commonly shared injury to plaintiff's ability to vote intelligently met Article III requirements. The Court held that it did not, since plaintiff had not alleged that he sustained any direct injury or was in danger of suffering any particular concrete injury as a result of the operation of the challenged statute.[21]

Citizen Standing to Raise Constitutional Issues, 67 KENTUCKY L.J. 147, 171 (1978-79), this Court has indicated no predisposition to retreat from its requirements. *See, U.S.* v. *Richardson*, 418 U.S. 166 (1974); *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208 (1974).

[20] *See also, American Jewish Congress* v. *Vance*, 575 F.2d 939, 943 (D.C. Cir. 1978).

[21] *Richardson* also implicitly denied citizen standing by acknowledging the viability of *Ex parte Levitt*, 302 U.S. 633 (1937). *Levitt*

Recognition of such "individuated injury" is at odds with the existence of *any* standing limitations.[22] Every clause in the Constitution offers as sound a basis as the Establishment Clause for inferring a derivative "interest" in the legality of government action. Indeed, a "shared individuated right" is nothing more than a "generalized grievance." For every violation, one can construct a "shared individuated" grievance among the entire citizenry that the violation was committed. But such outrage is, at most, an "external preference" about the rights of others, and not a personal preference constituting injury in fact.[23]

If citizen-separationists have an interest in Establishment Clause cases, then citizen-abolitionists likewise have a stake in eighth amendment cases and citizen-egalitarians have a stake

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challenged the constitutionality of Justice Black's appointment as an Associate Justice since he voted for an increase in retirement benefits of justices. The appointment was alleged to violate the Emoluments Clause of the Constitution. The Court held Levitt's claim insufficient because, "whatever [his] injury, it was one shared 'with all members of the public'." *Richardson*, 418 U.S. at 178.

[22] For example, Establishment Clause standing would be enormously enlarged. The outcome of previously decided cases would be jeopardized. *See, e.g., Murray* v. *Morton*, No. 80-1475 (D.D.C. Jan. 12, 1981), in which the court denied standing to two individual federal taxpayers and an organization, the Society of Separationists, who claimed that payment of salaries to the Senate and House Chaplains violated the Establishment Clause, since they alleged no interest "other than their views with respect to religion, to distinguish themselves or their personal stake in the outcome from that of any one of the population who pay taxes." *See also, Citizens Concerned for Separation of Church and State* v. *City & County of Denver*, 628 F.2d 1289 (10th Cir. 1980) and *Brashich* v. *Port Authority of New York*, 484 F. Supp. 697 (S.D.N.Y. 1979).

[23] R. Dworkin, TAKING RIGHTS SERIOUSLY 234 (1977) (distinguishing between "personal" and "external" preferences); see also, Brilmayer, 93 HARV. L. REV. at 311 (1979).

in fourteenth amendment cases. A long line of precedents beginning with *Frothingham* v. *Mellon*, 262 U.S. 447 (1923) would have been differently decided. *See, e.g., Rakas* v. *Illinois*, 439 U.S. 128 (1978) (no standing to raise fourth amendment objection to search of property in which defendant had no possessory interest); *American Jewish Congress* v. *Vance*, 575 F.2d 939 (D.C. Cir. 1978) (no standing to challenge the United States' cooperation in programs with foreign governments); *See also, Gilmore* v. *Utah*, 429 U.S. 1012 (1976) (eighth amendment).[24] For any clause, there are those who keenly sense the clause's infringement. But ideological interest in an issue is, of course, not enough.[25]

The apparent motive for the Third Circuit's willingness to disregard this Court's consistent admonishment that ideology is not a personal stake was eagerness to reach the merits. Judge Rosenn suggested that, given the longstanding commitment of the judiciary to enforcement of first amendment rights, the lack of a plaintiff with taxpayer or other status would result in hearing this claim at the request of a citizen-separationist. *Americans United*, 619 F.2d 252, 268 (Rosenn, J., concurring). There are three problems with this justifica-

[24] Other cases include *e.g., Galliot* v. *HEW*, 464 F.2d 598 (5th Cir. 1972), *cert. denied*, 409 U.S. 1060 (1972); *Sharrow* v. *Brown*, 447 F.2d 94 (2d Cir. 1971) and *Morrison* v. *Callaway*, 369 F. Supp. 1160 (D.D.C. 1974); *see also, Gravel* v. *Laird*, 347 F. Supp. 7 (D.D.C. 1972); *Pietsch* v. *President*, 434 F.2d 861 (2d Cir. 1970), *cert. denied*, 403 U.S. 920 (1971); *Velvel* v. *Nixon*, 415 F.2d 236 (10th Cir. 1969), *cert. denied*, 396 U.S. 1042 (1970).

[25] While it might on some facts be possible to argue that willingness to incur legal costs itself proves the existence of an "injury in fact," this argument has never won approval by the Court and could not without undercutting Article III limitations in their entirety. Even this argument is unavailable where, as here, plaintiffs' complaint seeks attorneys fees. Moreover, it is doubtful that staff employees of Americans United are personally obligated for legal fees.

tion. First, it is not clear whether there is another plaintiff who might have a traditional stake in the suit. As suggested earlier in this discussion, there may potentially be other individuals who have suffered traditional personal harm. If such individuals have not been identified, this may mean only that the case is not yet ripe for judicial resolution; this Court should exercise restraint in anticipating constitutional questions unnecessarily. *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975).

Second, the vesting of a "personal stake" in citizen-separationists can ultimately only serve to divest truly injured plaintiffs of control over litigation affecting their rights. One function of the standing doctrine is to keep litigation in the hands of the individuals most closely affected on the theory that they are their own best representatives. *Id.*, at 509, 515. Yet, if the plaintiffs here have standing, then ideological challengers will be able to sue even in situations where traditional plaintiffs exist. Once the standing threshold is satisfied, the existence of "better plaintiffs" becomes irrelevant. *Flast* at 98 n.17. Thus the claims advanced in *McGowan* v. *Maryland*, 366 U.S. 420 (1961), could well have been initiated by an organization with a separationist commitment rather than an individual indicted for violation of Sunday closing laws. The same is true of *Schempp* and *Engel*. It is of dubious fairness to the individuals immediately affected to allow ideological litigants to raise (and perhaps foreclose) such challenges on the merits.[26] On its surface the lower court's theory appears merely to provide that the best plaintiff available will be allowed to raise constitutional issues: "Americans United is likely to be the best available plaintiff." *Americans United*, 619 F.2d at 268 (Rosenn, J., concurring). But, in the long run the result will be that the best plaintiff will find control wrested from his grasp.

[26] Brilmayer, 93 HARV. L. REV. at 306.

Finally, this Court has indicated that the nonexistence of a traditional plaintiff is simply irrelevant:

> In a very real sense, the absence of any particular individual or class to litigate these claims gives support to the argument that the subject matter is committed to the surveillance of Congress, and ultimately to the political process. *U.S.* v. *Richardson*, 418 U.S. at 179 (1974).

The judicial function is to litigate "cases and controversies" touching the rights of individuals, not to make abstract declarations of constitutional law. *Muskrat* v. *U.S.*, 219 U.S. 346 (1911). A court that simply accepts whatever plaintiff comes forward in its eagerness to reach the merits of a constitutional question risks violating traditionally accepted principles of separation of powers.

IV. Citizen Or Citizen-Separationist Standing Violates The Doctrine Of Separation Of Powers.

By locating these plaintiffs' philosophical beliefs about the proper relationship between church and state within the zone of interests arguably protected by the Establishment Clause, the majority opinion in *Americans United* equates political discomforture with the personal stake required to call upon judicial power. The failure of the court below to offer any reasoned distinction for limiting this type of standing to Establishment Clause cases invites self-appointed representatives of the public interest to raise all manner of grievances against the government whether under the Constitution, federal statute or regulations. Judge Adams focuses on the plaintiffs' unalleged identity as separationists and the "declared goal of separation of church and state" as the reason these plaintiffs should litigate this case. *Americans United*, 619 F.2d 252, 261 (1980). The apparent justification is the hypothesis that regardless of whether their own personal interests are at stake, citizens must have recourse other than the political process for the vindication of their political beliefs. *Id.* at 265 n. 79.

The boundless nature of the standing formula offered by the majority would recognize a mass of heretofore unreviewable claims; it carries the potential for ". . . a remarkably illogical system of judicial supervision of the coordinate branches of the Federal Government." *U.S.* v. *Richardson*, 418 U.S. 166, 189 (1974) (Powell, J., concurring). "[G]overnment by injunction," where the citizenry judicially monitors the performance of the Executive and Legislative branches, violates the doctrine of separation of powers.

Separation of powers[27] is implied from the general structure of the first three Articles and acknowledged unswervingly throughout the cases as an underlying premise of the case or controversy requirement. This Court has consistently recognized, in rejecting citizen claims as the basis for standing, that the functions of government under our system are apportioned so that no one of the three departments may assert authority over the other branches. To decide legal issues in the absence of a personal claim "would be not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and co-equal department — an authority which plainly [the courts] do not possess." *Frothingham* v. *Mellon*, 262 U.S. 447, 489 (1923). *See also, Ex parte Levitt*, 302 U.S. 633, 634 (1937) (power of judicial review should not be invoked unless plaintiff adequately shows direct injury resulting from the challenged action, and not merely "a general interest common to all members of the public"). This Court continues to cite reluctance to encroach on the powers

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[27] While not expressly mentioned in the Constitution, the structure of the first three articles granting enumerated powers to the Congress, Executive and Judiciary strongly suggest the presence of the doctrine of separation of powers. *See, Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803) in which the Court first described the role of the Judiciary to exercise its jurisdiction only in cases properly before it. *See also*, Comment, *Standing, Separation of Powers, and the Demise of the Public Citizen*, 24 AM. U. L. REV. 835, 839 n. 12 (1975).

of the other branches as a fundamental premise of justiciability. In *Flast*, the Court specifically explicated the case or controversy requirement as based in part on the role assigned to the judiciary in a tripartite allocation of power "to assure that the federal courts will not intrude into areas committed to the other branches of government." 392 U.S. 83, 95 (1968).

Judge Adams' creation of a theory of a personal constitutional right to a government which conforms to the Constitution rides roughshod over the apportionment among the judiciary and the other branches. All citizens have an interest in seeing that the government behaves constitutionally since the powers of government were initially agreed to and limited by them. However, this expectation simply does not compel the conclusion that citizens have the right to invoke the judicial process to accomplish this end. This Court has acknowledged that allowing each and every citizen to litigate constitutional issues of public interest simply because citizens are the document's ultimate beneficiaries is a limitless exercise which ultimately distorts the judicial process and usurps the functions of the other co-equal branches. *U.S.* v. *Richardson*, 418 U.S. 166, 189 (1974); *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208, 222 (1974). The *Schlesinger* Court, recognizing that a significant alteration of the allocation of power between governmental branches is an unavoidable ramification of a grant of citizen standing, rejected plaintiffs' asserted claims, and stated that:

> [t]o permit a complainant who has no concrete injury to require a court to rule on important constitutional issues in the abstract would create the potential for abuse of the judicial process, distort the role of the Judiciary in its relationship to the Executive and Legislature and open the Judiciary to an arguable charge of providing 'government by injunction.' *Schlesinger, id.* at 222.

This Court has observed that where Congress has taken action to limit prudential restraints on the exercise of Article III jurisdiction, there is a role for increased standing. *Warth* v. *Seldin*, 422 U.S. 490, 501, 514 (1975). Congress has shown no

inclination to do this in the Establishment Clause context.[28] As this Court has warned, "[r]elaxation of standing requirements is directly related to the expansion of judicial power . . . with a shift away from a democratic form of government." *U.S.* v. *Richardson*, 418 U.S. 166, 188 (1974) (Powell, J., concurring). This potentially weakens democracy. Courts realize that they like Congress, set public policy, but as unelected bodies not directly responsive to the people, their policy functions must be carefully circumscribed.[29]

CONCLUSION

Petitioner, Valley Forge Christian College, respectfully prays the Court to reverse the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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[28] To the contrary, to the extent that the Congress has considered judicial jurisdiction to hear cases raising Establishment Clause claims, it has done so through proposals to invoke its power under Article III, §2 to restrict jurisdiction to hear school prayer cases. *See, e.g.*, S. 2070 96th Cong., 1st Sess. (1979).

[29] A. BICKEL, THE LEAST DANGEROUS BRANCH, 16-23 (1962).

Office-Supreme Court, U.S.
FILED
JUL 13 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-327

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

VALLEY FORGE CHRISTIAN COLLEGE, *Petitioner,*

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.

and

THE UNITED STATES DEPARTMENT OF EDUCATION, THE UNITED STATES OF AMERICA, *Respondents.*

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF RESPONDENTS AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.

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QUESTION PRESENTED

Whether the Court of Appeals misinterpreted the law of standing when it granted standing to Respondents to challenge, under the Establishment Clause of the First Amendment, Government transfer to a pervasively sectarian Bible College of property worth more than one million dollars.

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and

THE UNITED STATES DEPARTMENT OF EDUCATION, THE UNITED STATES OF AMERICA, *Respondents.*

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF RESPONDENTS AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.

STATEMENT OF THE CASE

Northeast Bible College, now known as Valley Forge Christian College, describes itself as a theological or divinity school the *primary* purpose of which "is to train leaders for church related ministries." J.A. 64, 69, and 102. The Court of Appeals characterized it as "admittedly sectarian." *Americans United* v. *United States Department of HEW*, 619 F.2d 252, 253 (1980). The Bible College is operated by a religious denomination — the Assemblies of God — "for the training of pastors, evangelists, missionaries, Christian education and lay workers." J.A. 64.

The Bible College's president, the Rev. Obie L. Harrup, Sr., in the school Bulletin notes that "God and our country has [*sic*] given us one of the finest college facilities in the United States. . . ." The Rev. Harrup notes that students "sit under [Holy] Spirit filled teachers who are qualified academically and spiritually to teach . . . God's word." He further states that the "Spirit is present in both classroom and chapel to give guidance and help towards a God-centered life. From such a student body as ours, ministers, missionaries, and Christian workers go to the ends of the earth to fulfill the Great Commission." J.A. 63. The Great Commission of Jesus is recorded in Matthew 28:19 20: "Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost: Teaching them to observe all things whatsoever I have commanded you: and, lo, I am with you alway, *even* unto the end of the world."

Admission requirements stress that since the Bible College "is basically . . . for training those who expect to enter some form of Christian service, the motivation of the prospective student is of prime importance." J.A. 89. "Resident students must have a born again experience and be of good moral character. Those who have not experienced the Baptism in the Holy Spirit will be encouraged to seek and receive this experience." J.A. 89.

The application blank for the Bible College asks such questions as the following in a category labeled "Christian Experience and Objectives": "When and where were you converted?" "Have you backslidden since being converted?" "Have you been baptized in the Holy Spirit according to Acts 2:4?" The application section entitled "Supplementary Statement" asks such ques-

tions as these: "Do you believe God has called you to a definite Christian work?" "When and under what circumstances did you first know definitely that you were called by God to this ministry? (For example, did your call come through immediate awareness, by means of a portion of scripture, through someone's word of counsel or exhortation, in a service in which others were consecrating themselves to the Lord, or by other means?)" J.A. 138-41.

The application blank asks prospective students to supply the church, name, and address of three references, including one "pastor" and two "Christian leaders." J.A. 140. The reference sheets that the pastor and Christian leaders fill out include evaluation of the prospective student's "Christian life." They ask such questions as "Do you believe the applicant is a commited [*sic*] Christian?" "Do you consider applicant emotionally qualified for full-time Christian service?" "In what form of Christian work has applicant engaged and with what success?" J.A. 142-44.

All entering students must take a "Bible content" test "to help guide counselors and teachers." J.A. 90.

The Bulletin of the Bible College outlines a dozen "fundamental truths believed and taught" at the school. They include statements concerning the Bible as the Word of God; the nature of the Godhead; the nature of Christ and His ministry; justification by faith in Jesus Christ; the work of the Holy Spirit; holiness; faith healing; the imminent return of Christ; and, finally, " 'They which are written in the Lamb's Book of Life' shall enter into the holy city. . . . But 'whosoever was not found written in the book of Life was cast into the lake of fire.'" J.A. 67-68.

Students must attend daily chapel services, which the Bulletin describes as the "highlight of the daily progam." J.A. 71. The Bulletin continues: "The spiritual tone of the college is maintained as students meet God in worship and enjoy the anointed ministry of the Word. . . . As the Holy Spirit moves upon these services, ample time is made in the schedule for waiting on the Lord. Attendance is required." J.A. 71.

A "dominant" feature of the Bible College's program is its Christian Service program, in which each student must participate each term. J.A. 71 and 95. Each student must complete before graduation at least 35 Christian Service assignments in a "variety of ministries, selected by the Director of Christian Service in keeping with the individual student's needs, aspirations and chosen field of ministry. Experiences may be . . . in the areas of Bible clubs, canvassing, street meetings, junior churches, young peoples meetings, teaching in Sunday Schools, services in jails and old folks homes, and in song leading and preaching in church services." J.A. 71 and 95. The Bulletin notes that through this required ministry "each year many souls find Christ as Savior." J.A. 95.

In addition, the "entire student body is organized into 'The Student Missionary Society,'" student leaders of which present "special missionary prayers" and the needs of Assemblies of God missions. "Each Friday the Society conducts a missionary service" at which students are challenged "with the urgency of world evangelism. It is in such services that the calling of God to the harvest becomes definite to many students." J.A. 71-72. Also, one of the highlights of the school year is the annual missionary convention, where missionaries on furlough give students first-hand information about mission work. J.A. 72.

The Bible College also advises students to "counsel with the president prior to engagement and receive his permission." J.A. 72. They are warned that "[d]eparture from the school's standards will result in Christian counseling and when necessary, appropriate discipline will be administered in the hope of helping the student develop a mature Christian character." J.A. 73. Women students are exhorted to "wear modest clothing, reflecting Christian character." J.A. 75. The Bulletin describes the library as "especially adapted to a Bible college curriculum." J.A. 74. The bookstore stocks Bibles and religious books. J.A. 85.

The school follows policies established by the Department of Education of the Assemblies of God. J.A. 79. Tuition is discounted 10% for the wives and children of pastors and full-time evangelists, 25% for ordained ministers, and 50% for Assemblies of God foreign missionaries and their children. J.A. 84. The Bible College welcomes donors who wish to establish scholarships as investments "in the training of future workers for God." J.A. 85.

The Bible College has three kinds of four-year programs: (1) Ministerial, "especially prepared for those . . . who wish to prepare . . . for pastoral or evangelistic ministries"; (2) Missionary, "especially developed for those . . . who wish to prepare . . . for home and missionary ministries"; and (3) Christian Education, "especially designed for those . . . who wish to enter the teaching ministries of the Church." J.A. 102.

The four three-year certificate programs are (1) an abbreviated Ministerial program concentrating on "pastoral aspects of ministry"; (2) a shortened Missionary program providing "basic skills for . . . missionary service"; (3) a limited Christian Education pro-

gram providing "basic teaching methodology for ministries within a local church"; and (4) a Bible Concentration program "designed to give the student a thorough and practical knowledge of the Bible." J.A. 102.

The final curriculum offering is a one-year certificate program "developed primarily for those . . . who desire personal enrichment in Bible and Theology" and described as being "especially beneficial for Sunday School teachers, Bible study group leaders, Youth group leaders and other[s] . . . in local church leadership positions." J.A. 102.

Course descriptions are divided into three divisions. J.A. 118-25. The Division of Bible and Theology includes subdivisions in Old and New Testament studies and Theology. J.A. 118-19. The Division of Professional Studies includes subdivisions in Ministerial, Missionary, and Christian Education. J.A. 119-22. The Ministerial subdivision includes such courses as Personal Evangelism, Hermeneutics, and Homiletics. J.A. 119-20. The Missionary subdivision includes such courses as Home Missions and History of Missions. J.A. 120-21. The Christian Education subdivision includes such courses as Child Evangelism and Christian Education of Children ("with the purpose of developing a properly organized educational program for the children's departments of the Sunday School"). J.A. 121-22. The Division of General Education has eight subdivisions, including Languages (including Deaf Ministries I and II and Biblical Hebrew and Greek), Music (including courses concentrating on "church music and congregational song leading techniques," "congregational singing," and "the needs of the future church or school choir director"). Organ lessons "consist primarily of

studying sacred music." Piano lessons include study of hymn arrangements. J.A. 122-24. In the Physical Science subdivision, Survey of Physical Sciences presents physics, chemistry, astronomy, and geology from the "Christian view of the world in the light of scientific discovery." J.A. 124. In the Social Sciences subdivision, Social Problems studies the "role of the Christian worker in finding a solution" to "crime, delinquency, broken homes, urbanization, [and] minority groups." Introduction to Philosophy stresses "the Christian frame of reference." J.A. 124-25.

Membership in the honor society, "Delta Epsilon Chi (approved in Christ-Romans 16:10)" depends in part on "Christian character." J.A. 95.

Graduation requirements include "[s]oundness in doctrine," "[a]cceptible [*sic*] deportment and regular attendance in chapel," and "[e]vidence of development and dependability in Christian Service," specifically the fulfillment of at least 35 Christian Service requirements. J.A. 96. The Bulletin notes that graduates "will be able to enjoy a sensitivity to the ministry of the Holy Spirit so that both the fruits and gifts of the Spirit may be manifested through them in an outreach to the lost and in the edification of believers." J.A. 66.

The Bible College requires its faculty "to have been baptized in the Holy Spirit and be living consistent Christian lives." J.A. 37. Prospective faculty are asked their religious affiliation. J.A. 27 and 38. Twelve of the sixteen regular faculty members (75%) are — or were — pastors, assistant pastors, co-pastors, evangelists, or missionaries. J.A. 127-28. All members of the administration of the Bible College must be affiliated with the Assemblies of God. J.A. 36. Of the 35 members of the school's Board of Regents, all of whom are affiliated

with the Assemblies of God, 27 (77%) are pastors. J.A. 34-35. The Board consists of four members from each participating district of the Assemblies of God. J.A. 35. The Executive Director of the Department of Education of the Assemblies of God is a member of the Board by virtue of office. J.A. 35-36. Approximately 75% (376) of the 501 students enrolled in 1977-78 were affiliated with the Assemblies of God. J.A. 47-60.

The federal Department of Health, Education and Welfare (HEW) in August 1976 conveyed to the Bible College 77 acres of surplus government property located in Valley Forge, Pennsylvania, including all buildings, fixtures, and equipment situated on the land. The transfer was made pursuant to the Federal Property and Administrative Services Act of 1949, which authorizes HEW to sell surplus property for tax-exempt, educational and health purposes. 619 F.2d at 253.

The Act requires the Secretary of HEW to consider benefits that may accrue to the United States from the new use of the property and to grant discounts — "public benefit allowances" — to the transferees, in this case to the Bible College. In exchange for the Bible College's agreement to use the property for specified educational purposes for 30 years, HEW granted the school a 100% public benefit allowance. Thus the Bible College received title to the property without making any financial payment. The property — representing a government investment of $10,374,386. — had a fair value at time of its transfer to the Bible College of $1,303,730. *Ibid.*

Respondents Americans United for Separation of Church and State, Inc., a nonprofit, tax-exempt organization with a claimed membership of 90,000, and four of its individual directors — all citizens and taxpayers of

the United States — challenged the property transfer to the Bible College. Americans United, which defends, maintains, and promotes religious liberty and the principle of separation of church and state, and the taxpayers-citizens claimed the property transfer violated their rights as protected by the Establishment Clause of the First Amendment. They sought declaratory and injunctive relief to void the transfer. *Ibid.*

The District Court dismissed the suit on the ground Americans United and the individual plaintiffs lacked standing as taxpayers to challenge the property under the Federal Property and Administrative Services Act. *Ibid.* The Court of Appeals reversed and remanded, concluding: "The constitutional 'injury in fact' complained of by the plaintiffs here gives them a sufficient 'personal stake in the outcome' to assure a complete perspective of the issues involved. And we are convinced that the interest which the plaintiffs assert and seek to safeguard here is within the zone of interests protected by the Establishment Clause." *Id.* at 266.

Valley Forge Christian College petitioned this Court for a writ of certiorari, which was granted on February 23, 1981. J.A. 193.

SUMMARY OF ARGUMENT

The Bible College and the Government seek by attempting to apply formalistic standing rules, no longer even rigidly adhered to by this Court, to prevent Respondents from litigating their rights as guaranteed by the Establishment Clause of the First Amendment.

Respondents here challenge the decision to sell property to a pervasively sectarian institution without receiving in return either money or a constitutionally permissible public benefit.

The property was transferred by the Department of Health, Education and Welfare (HEW) to the Bible College by authority of the Federal Property and Administrative Services Act, which Congress enacted under the authority of Article IV, Section 3, Clause 2, of the Constitution, which empowers Congress to dispose of and make needful rules and regulations concerning federal property. The Act authorizes the Administrator of General Services to dispose of surplus property and permits the Administrator to assign to HEW real and personal property for educational and public health uses.

In fixing the value of surplus property to be transferred to an institution, the Act instructs HEW to consider any benefit which has accrued or may accrue to the United States. But the Act contains no prohibition against granting a public benefit allowance to a pervasively sectarian institution and fails also to prohibit use of the property for religious purposes.

When HEW sold the property to the Bible College, the property had a fair-market value of $1,307,730. However, the Government granted the Bible College a 100% public benefit allowance in return for the pervasively sectarian Bible College's training of ministers, missionaries, and other church workers.

Respondents claim that this transaction violated the Establishment Clause of the First Amendment.

Respondent Americans United claims standing on behalf of its citizen-taxpayer members. The four individual Respondents claim standing both as federal taxpayers and United States citizens.

Respondents meet both the constitutional and prudential standing requirements enunciated in this Court's most recent decisions on standing. Respondents person-

ally have suffered an actual injury as a result of the unconstitutional conduct of the Government.

Respondents additionally have standing as persons adversely affected or aggrieved under the Administrative Procedures Act because of HEW's failure to obtain constitutionally sufficient consideration for the sale of the property.

There is no logical distinction, as far as case presentation and the ability of a court to resolve an issue are concerned, between a plaintiff contesting the donation of money or the grant of surplus, but valuable, property. Prudential and constitutional considerations mandate that the courts, and not voters or lawmakers, determine the specific factual and constitutional issues raised in this case.

Respondents not only have standing to litigate the Establishment Clause issue, but they uniquely possess those attributes most vital to such litigation.

ARGUMENT

I. THE GOVERNMENT TRANSFERRED SURPLUS PROPERTY TO A PERVASIVELY SECTARIAN BIBLE COLLEGE IN EXCHANGE FOR A PUBLIC BENEFIT — THE TRAINING OF MINISTERS, MISSIONARIES, AND OTHER RELIGIOUS WORKERS — WHICH IS FORBIDDEN BY THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT.

The Government and the Bible College seek to have this Court apply rigid and formalistic standing rules to prohibit Respondents' claim that the Government's transfer of surplus property to the Bible College violates the rights of Respondents as guaranteed by the Establishment Clause of the First Amendment.

The effect of Petitioners' strategy would remove from judicial scrutiny a substantial portion of constitu-

tional abuses and would thus divide the Establishment Clause into enforceable and non-enforceable rights. The practical result would be the tacit condoning of governmental conduct which, except for an overly restrictive interpretation of the law of standing, would be struck down as a violation of the Establishment Clause.

The Government apparently believes that it has discovered a method by which it may funnel millions of dollars worth of valuable property to pervasively sectarian institutions with no one having standing to object. And Petitioner in its Petition for Certiorari boldly asserted that "[u]ntil this lawsuit, the Federal Property Act had never been challenged in its 31-year history; none of the hundreds and hundreds of surplus transfers to health and educational institutions (including those which were church-related) had ever been questioned." Petition at 8-9. The Court of Appeals noted that "[s]ince the enactment of this Act, HEW has authorized more than 650 transfers of surplus government property to various religious institutions. The total fair market value of government property transferred to denominationally-sponsored organizations during this period amounted to more than $25,700,000.00." 619 F.2d at 254. The government sale of public property here attacked represents one of the largest surplus property transfers to a religious institution. Joint Appendix filed with Court of Appeals at 202-227.

Respondents do not here attack those previously consummated transfers. Clearly those transfers would depend on the specifics of each case and are not the subject of this litigation.

Contrary to the Government's assertion that Respondents here challenge the decision of a governmental agency to sell a parcel of surplus property, Govern-

ment's Brief on Merits at 15, their challenge is to the Government's sale of the property to a pervasively sectarian institution without receiving in return full and fair consideration, cash or kind, or a constitutionally permissible public benefit.[1]

Respondents do not challenge the Government's decision to declare the property surplus and to sell it. Nor do Respondents object to the procedures followed to locate a purchaser. If the Bible College had paid adequate consideration based upon the determined sale price of $1,307,730, there would be no case or controversy between the parties to this action.

Article IV, Section 3, Clause 2, of the Constitution in pertinent part provides: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . ." Thus, this case clearly deals with the exercise of congressional power, though that power may have been delegated to the executive branch.

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[1] The Statement of the Case has set out in some detail the substantive facts of this case because this Court in *Flast* v. *Cohen*, 392 U.S. 83 (1968), pointed out that it is appropriate to examine the substantive issues involved to "determine whether there is a logical nexus between the status asserted and the claim sought to be adjudicated." *Id.* at 102. Standing can be discussed meaningfully only in the context of the precise contention of the parties. One commentator has suggested that standing should not be treated as a threshold issue, but rather should be viewed as a component of plaintiff's claim for relief since its resolution necessarily involves substantive issues such as injury, duty, and causation. See L. Albert, *Standing to Challenge Administrative Action: An Inadequate Surrogate for Claims for Relief*, 83 Yale L.J. 425, 426-27 (1974).

Pursuant to Article IV, Section 3, Clause 2, of the Constitution, Congress enacted the Federal Property and Administrative Services Act of 1949, 40 U.S.C. §§471 *et seq.*, which, according to the Act, was meant to provide an "economical and efficient system for . . . the disposal of surplus property." Congress was clearly sensitive to the worth of excess property and wished to guard against the loss of the value of any such surplus property. 40 U.S.C. §483(a)(1).

In dealing with surplus property, Congress carefully prescribed how the property would be disposed of, generally insuring that the government would obtain fair consideration from the transferee in return for the property disposed of. 40 U.S.C. §484. Under certain circumstances the Act even required the Administrator of General Services to advertise for bids in a manner and by methods calculated to provide for "full and free competition which is consistent with the value and nature of the property involved." 40 U.S.C. §484(e). Congress even demanded that no funds be used by any department or agency in any branch of government if the furniture requested could be met "by transfer of excess furniture including rehabilitated furniture from other departments and agencies." 40 U.S.C. §483(b).

The Act, however, provides that the administrator in his discretion may assign to HEW, (now Department of Education) for disposal "surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary of the Department of Health, Education and Welfare as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research." 40 U.S.C. §484(k). Congress imposed no bid requirements on HEW for surplus property disposed of under this provision.

In fixing the sale or lease value of surplus property, the Act instructs the Secretary of HEW to consider "any benefit which accrued or may accrue to the United States from the use of such property by any . . . institution." 40 U.S.C. §484(k)(1)(C). But Congress failed to place into the Act any prohibition against the granting of a public-benefit allowance to a pervasively sectarian institution. Likewise the Act fails to prohibit the transfer of property to be used for religious exercises or purposes. *See Tilton* v. *Richardson,* 403 U.S. 672 (1971), in which this Court held that it could not be assumed that a substantial structure had no value after 20 years and hence the unrestricted use of a valuable property in effect is an unconstitutional contribution of some value to a religious body if at the end of 20 years the building is converted into a chapel or otherwise used to promote religious interests. Respondents argue that without a prohibition against pervasively sectarian use, the Federal Property and Administrative Services Act, as applied to the facts of this case, becomes the vehicle by which the Government, exercising the powers delegated by Congress, has breached the Establishment Clause.

Under Section 485(a) of the Act, all proceeds "from any sale, lease or other disposition shall be covered into the Treasury as miscellaneous receipts . . . ." Thus, the Act reveals a congressional attempt to prevent a drain of the public treasury by demanding the recovery of the full value of all surplus property disposed of. Even property transferred to an educational institution was to be transferred for value received, the consideration to be either monetary or an allowance for some public benefit.

In this case tax funds clearly were used to acquire the property in question. Since 1942 the federal government spent approximately $10,374,386 of tax moneys to

improve and furnish the subject property. HEW determined that the fair market value of this property at the time of the transfer was $1,307,730. 619 F.2d at 253. The Bible College apparently agreed with the government that the real estate transferred had a fair market value of $577,500 as set out in the deed of transfer. J.A. 177. The Bible College also agreed by executing the bill of sale that the personal property involved in the transfer had an additional fair market value of $730,230. Joint Appendix filed with Court of Appeals at 276. For all of this the Bible College paid not even one cent to the government. And the Government insists this transfer was not an outright gift to a pervasively sectarian college.

To avoid the holding of *Flast* v. *Cohen*, 392 U.S. 83 (1968), the Government says: "They [Respondents] object only to the identity of the purchaser with whom the government contracted after the useful life of the property was exhausted." Government's Brief on Merits at 15. The Government is far off the mark. First, Respondents do not object to the sale per se. Second, although the Government might have had no further use for the property, the useful life of the property was not exhausted. And third, Respondents do not object to the identity of the purchaser. Respondents do object because either the transaction was a sham and in truth the Government made a donation to a pervasively sectarian Bible College or, and worse in Respondents' judgment, the contract multiplied the Establishment-Clause violation. The Bible College agreed to pay for the property through a public benefit that would accrue from the use of the property by the Bible College. But what is the public benefit the Government is to receive? That benefit, basically, consists of the training of ministers, missionaries, and others engaged in various ministries of

a church. It is an educational program designed only for those who agree to attend chapel and to accept thirty-five (35) Christian Service assignments. It is an educational program from which graduation is dependent upon demonstrating that the student evidences soundness in church doctrines.

To be sure, as alleged by the Government, there are some restrictions in the instruments of transfer. Government's Brief on Merits at 8. The Bible College is forbidden to sell or encumber the land except under stated circumstances and is required to comply with applicable civil rights legislation, though it may, and does, discriminate on the basis of religion. But, none of the restrictions relate in any way to the use of the facilities for pervasively sectarian education or to its religion-based admissions and graduation requirements. Thus, what the Government contracted to receive for the benefit of the Nation, in lieu of cash to be deposited in the United States Treasury, was pervasively sectarian education.

Here the aid to the Bible College was neither indirect nor incidental. More than $1.3 million worth of government property purchased at taxpayers' expense was transferred to a church-operated, pervasively sectarian Bible College. The grant even included a chapel which the College immediately used for religious services. Respondents contend that the grant to, or purchase of, pervasively sectarian education was not the type of permissible aid to education found in *Hunt* v. *McNair,* 413 U.S. 734 (1973), and *Tilton* v. *Richardson, supra.* Rather this aid is to a self-proclaimed theological school with an evangelical and proselytizing mission. This grant has the primary effect of advancing religion. *Meek* v. *Pittenger,* 421 U.S. 349, 366 (1975).

The College has no misunderstanding of how it obtained this bonanza. "God and our country has given us one of the finest college facilities in the United States," writes the Rev. Obie L. Harrup, Sr., president of the Bible College, in the College Bulletin. He continues: "As a student at Valley Forge Christian College you will sit under Spirit filled teachers who are qualified academically and spiritually to teach you God's word." In the next paragraph the president adds: "The Holy Spirit is present in both classroom and chapel to give guidance and help towards a God-centered life. From such a student body as ours, ministers, missionaries, and Christian Workers go to the ends of the earth to fulfill the Great Commission." The president does speak of various secular fields. He states: "Today, men and women who have already prepared for and labored in various secular fields, are feeling God's call to the ministry." J.A. 63.

The three main evils against which the Establishment Clause was intended to protect are "sponsorship, financial support, and active involvement of the sovereign in religious activities." *Lemon* v. *Kurtzman,* 403 U.S. 602, 612 (1971). This Court also has spoken out against the placement of the Government's power, prestige, and financial support behind a particular religion, *Engel* v. *Vitale,* 370 U.S. 421, 429-30 (1962), and "active involvement of the sovereign in religious activities." *School District of Abington Township* v. *Schempp,* 374 U.S. 203, 222 (1963).

This Court in *Schempp* stated that "[t]he vice of all such arrangements [all improper forms of church-state relationships] under the Establishment Clause is that the state is lending its assistance to a church's efforts to gain and keep adherents." *Id.* at 222. That "vice" is present in this case.

This Court also has held that "the Establishment Clause is not limited to precluding the State itself from conducting religious exercises. It also forbids the State to employ facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have by relying on its members alone." *Id.* at 229 (Mr. Justice Douglas concurring).

Also this Court has instructed that the history which its prior decisions "have summoned to aid interpretation of the Establishment Clause permits little doubt that its prohibition was designed comprehensively to prevent those official involvements of religion which tend to foster or discourage religious worship or belief." *Id.* at 234 (Mr. Justice Brennan concurring). The transfer in this case fosters the religious-education ministry of the Assemblies of God Church.

In his concurring opinion in *McCollum* v. *Board of Education,* 333 U.S. 203 (1948), Mr. Justice Frankfurter said: "We are all agreed that the First and Fourteenth Amendments have a secular reach far more penetrating in the conduct of Government than merely to forbid an 'established church.' . . . We renew our conviction that 'we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion.'"

II. RESPONDENT AMERICANS UNITED AND THE INDIVIDUAL RESPONDENTS MEET THE CONSTITUTIONAL AND PRUDENTIAL REQUIREMENTS FOR STANDING AS ENUNCIATED BY THIS COURT.

Respondents claim to have standing both in their capacity as taxpayers and also as citizens to challenge on Establishment Clause grounds the Government transfer to the Bible College.

For example, Andrew Leigh Gunn, one of the individual Respondents, testified this way:

> Q. Will you tell me . . . how your payment of taxes . . . is in any way affected by the transfer of this property . . .?
>
> A. Well, the property was paid for at one time by public taxes, through the taxing powers of the Federal Government, and as a taxpayer I have a certain share in that land, and so my financial interests were affected through my taxes, and also my rights as a citizen were being violated in my judgment through the First Amendment of the Constitution, which maintains separation of church and state and religious liberty . . . so my financial interest and my rights as a citizen were being violated.

Gunn Deposition at 10. Another individual Respondent, Mallary Binns, testified this way:

> Q. Upon what did you base your decision to become a named plaintiff in this lawsuit?
>
> A. It is twofold. . . . One, the violation of the no establishment clause in the First Amendment, where you have Government valued property being given to a religious institution, and as a taxpayer. This Government property of value, of which I have a vested interest as a taypayer and as a citizen, being given to a religious institution. So it is a twofold concern.

Binns Deposition at 14-15.

The question of standing to sue determines whether plaintiffs are entitled to have a court decide the merits of a dispute. This inquiry involves both constitutional limitations under Article III and prudential concerns. In both dimensions standing concerns the proper, and properly limited, role of courts in our democratic society.

Warth v. *Seldin*, 422 U.S. 490, 498 (1975); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979), 99 S.Ct. 1601, 1607-08.

A. Respondents Suffered An Actual Injury To Their Right To Be Free From Religious Establishment When The Government Transferred The Property To The Bible College In Return For Impermissible Consideration.

This Court has stated that in order for a litigant to satisfy the Article III constitutional requirements of making out a case or controversy, "the plaintiff must show that he personally suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone, Realtors* v. *Village of Bellwood, supra* at 1608.

In *United States Parole Commission* v. *Geraghty*, 445 U.S. 388 (1980), 100 S.Ct. 1202, 1208, this Court noted that the case or controversy limitation serves two complementary purposes: (1) "It limits the business of the federal courts to 'questions presented in an adversary context and in a forum historically viewed as capable of resolution through the judicial process' " and (2) "[I]t defines the 'role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into areas committed to the other branches of government.' "

Clearly this Court has rejected the wooden logic inherent in the formalistic view presented by the Petitioner and the Government. Both ignore the teachings of this Court on the doctrine of standing. Both the Government and the Bible College contend that Respondents do not meet a "personal stake" requirement required by Article III.

This Court, however, in *Geraghty, supra* at 1212, recently stated that "[t]he purpose of the 'personal stake' requirement is to assure that the case is in a form capable of judicial resolution. The imperatives of a dispute capable of judicial resolution are sharply presented issues in a concrete factual setting and self-interested parties vigorously advocating opposing positions."

The loosening of the constitutional requirements for standing is demonstrated by this Court's instructive footnote in *Geraghty, supra* at 1212-13, n. 11: "We concede that the prior cases may be said to be somewhat confusing, and that some, perhaps, are irreconcilable with others. Our point is that the strict, formalistic view of Art. III jurisprudence, while perhaps the starting point of all inquiry, is riddled with exceptions. And, in creating each exception, the Court has looked to practicalities and prudential considerations. The resulting doctrine can be characterized, aptly, as 'flexible'; it has been developed, not irresponsibly, but 'with some care' . . . ."

To paraphrase the words of this Court in *Geraghty*, this case does not approach the extreme feared by the Government. These plaintiffs "suffered actual, concrete injury as a result of the putatively illegal conduct, and this injury will satisfy the formalistic personal stake requirement. . . ." *Id.* at 1213, n. 11.

As the Court of Appeals in this case observed, standing is not riveted to economic issues. Aesthetic, conservational, and recreational values may satisfy the injury-in-fact requirement. 619 F.2d at 257.

In *Village of Arlington Heights* v. *Metropolitan Housing Authority*, 429 U.S. 252, 262-63 (1977), this

Court noted: "It has long been clear that economic injury is not the only kind of injury that can support a plaintiff's standing." In *Association of Data Processing Services Organizations* v. *Camp*, 397 U.S. 150, 154 (1970), this Court also explained that "a person . . . may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause." Similarly, the Court of Appeals in this case held that Respondents' claim is that "the challenged transfer of government property to a religious institution injures their individual and personal constitutional right of religious liberty and separation of church and state." 619 F.2d at 265.

This Court also has observed a distinction between the Establishment and Free Exercise Clauses. In *Engel* v. *Vitale*, *supra* at 430-32, the Court said:

> The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct government compulsion and is violated by the enactment of the laws which establish an official religion whether these laws operate directly to coerce nonobserving individuals or not. . . . The Establishment Clause thus stands as an expression that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a civil magistrate. Another purpose of the Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand. . . .

In *Flast*, both Mr. Justice Stewart and Mr. Justice Fortas recognized the special importance of the purpose of the Establishment Clause in dealing with standing questions. *Flast* v. *Cohen*, *supra* at 114-15. This Court also has declared that "values enshrined in the First

Amendment plainly rank high 'in the scales of our national values.' " *NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490 (1979), 99 S.Ct. 1313, 1319. And it is basic that the First Amendment provisions prohibiting an abridgement of religious freedom are to be broadly interpreted. *Everson* v. *Board of Education*, 330 U.S. 1 (1947).

Respondents claim a particular concrete injury to a fundamental right, a right protected by the first guarantee in the Bill of Rights.[2] For example, Respondent Andrew Leigh Gunn noted "that when Government takes sides on matters of religion, it is taking a side against my religion . . . [a]nd thereafter is inhibiting my freedom of conscience by forcing me as a taxpayer and as a citizen to give support to someone else's religion." Gunn Deposition at 29-30.

Historically, as Justice Frankfurter explained, "[a] litigant ordinarily has standing to challenge governmental action of a sort that, if taken by a private person, would

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[2] Professor Louis Jaffee argues that taxpayer-citizen suits are consistent with the concept of majority rule: "Where there is no statutory or common law basis for a taxpayer suit the problem itself is . . . a constitutional one. One might distinguish between cases in which . . . the citizen or taxpayer asserting the constitutional claim, though not immediately affected, is seen as a member of a class entitled to constitutional protection and . . . one which is not so situated. I confess the distinction is not so obvious as it may sound since it is arguable that all constitutional prescriptions are intended for the protection of that class of citizens which is at any one time disadvantaged by the failure to observe the constitutional requirement. . . . But there is, I believe, a sense in which the protections of the Bill of Rights differ [from other constitutional protections such as the presidential veto power and methods of amending the Constitution]." L. Jaffee, *The Citizen as Litigant In Public Actions: The Non-Hohfeldian or Ideological Plaintiff*, 116 U.Pa.L.R. 1033, 1045 (1968).

create a right of action recognizable by the courts. . . . Or standing may be based on an interest created by the Constitution or a statute. . . ." *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 152 (1951) (concurring opinion) (citations omitted). The Establishment Clause obviously was intended to protect not merely taxpayers as such. It was designed to protect every citizen.

The Court of Appeals noted in its decision that "[a]s Chief Justice Marshall wrote long ago in *Marbury* v. *Madison* [1 Cr. (5 U.S.) 137 (1803)], ' "[t]he very existence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." ' 619 F.2d at 266. It further observed: "The constitutional 'injury in fact' complained of by the Plaintiffs here gives them a sufficient 'personal stake in the outcome' to assure a complete perspective of the issues involved." *Ibid.*

B. Respondents Have Standing Under The Administrative Procedure Act To Challenge This Transfer Of Property.

Respondents have a second basis for standing in this case. The Administrative Procedure Act, 5 U.S.C. §702 (1970), grants standing to challenge administrative action to any "person suffering legal wrong . . . or adversely affected or aggrieved" by it. *United States* v. *Students Challenging Regulatory Agency Procedure (SCRAP)*, 412 U.S. 669, 689, n. 14 (1973).

This Court has held and reaffirmed that under APA review the constitutional threshold requirement for standing is reduced to "actual injury redressable by the court." *Data Processing Service Organizations* v. *Camp*, *supra*; *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38-39 (1976).

In this case the Federal Property and Administrative Services Act seems clearly designed to prevent the public loss of the residual value of any surplus property. The statute clearly requires the governmental agencies to either obtain from purchasers the fair market value of any property disposed of or to obtain some constitutionally permissible benefit to the United States. Respondents as taxpayers and citizens under the APA are adversely affected or aggrieved by HEW's failure to obtain fair and constitutionally sufficient consideration for the sale of the property.

The courts repeatedly have held that what government is prohibited from doing directly, it cannot do indirectly. Otherwise "the Establishment Clause become[s] a mockery." *School District of Abington Township* v. *Schempp, supra* at 229-30 (Mr. Justice Douglas concurring).

Few today would seriously argue that government can make a direct appropriation of funds from the federal treasury for the purpose of setting up and furnishing a pervasively sectarian college. There is no practical difference or logical distinction as far as presentation of a case and the ability of a court to resolve an issue is concerned, between a plaintiff objecting to a grant of money or the grant of surplus, but valuable, real estate, buildings, and furnishings.

This Court in focusing upon the taxpayers' status in *Flast* quite naturally zeroed in on the Taxing and Spending Clause of the Constitution because in *Flast* that was the constitutional clause that was implicated. The Establishment Clause equally limits the power of Congress to dispose of property under Article IV, Section 3, Clause 2, of the Constitution. This concept clearly concerned the Court of Appeals in this case. It observed

that under Petitioner's view of standing, "Congress could transfer to a particular religious organization such national facilities as the Naval Observatory or the Army War College, secure in the knowledge that any citizen attempting to challenge such action under the Establishment Clause would not even be granted standing to make the claim." 619 F.2d at 266.[3]

A denial of standing in a sense is a decision that a particular constitutional provision does not protect one in the Respondents' position. K. Scott, *Standing In the Supreme Court — A Functional Analysis*, 86 Harv. L.R. 645, 687, n. 180 (1973).

The Respondents should have as much standing in attacking a grant under the exercise of congressional power under Article IV, Section 3, Clause 2, as plaintiffs in *Flast* under Article I, Section 8, Clause 1. The Government is parting with property just as surely under one clause as under the other. It depletes the Nation's capital assets whether the grant is one of a million dollar bills or a million dollars worth of land, bricks, mortar, and furnishings. The case is no less adversary in one case than the other, and one case is no less capable of judicial resolution. Taxpayers suffer equally in both situations.

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[3] If Petitioner and the Government are correct that no one, perhaps, has standing to challenge government acts under its Article IV, Section 3, Clause 1, powers, all types of gifts to churches might be possible without the benefit of judicial intervention. The government could conceivably give to pervasively sectarian institutions surplus electric power generated by the Tennessee Valley Authority; surplus real estate acquired through eminent domain powers; property, including money, obtained by the Government in the form of gifts; and even real estate obtained under treaties. The list is potentially endless.

C. Establishment Clause Issues Should Be Decided By The Judicial Branch.

Another question in this case involves the doctrine of the separation of powers and the appropriate forum to hear the Respondents' claim. Petitioner and the Government would leave Respondents' injury to the political process for redress.

The Government says that claims such as Respondents' must be vindicated in the legislative and executive branches. The Government advises that after more than thirty years the Department of Education is reviewing its procedures for contracting with church-related educational institutions for the sale of surplus property. The Government advises that during this review period, "plaintiffs may present their views to the Department of Education, and, if they are dissatisfied with the response, they may present their views both to their representatives in Congress and to the appropriate officials in the Executive Branch." The Government indicates "[t]he existence of a representative government responsible to the electorate, and the continuous scrutiny of government actions by the news media, are sufficient safeguards against hypothetical abuses. . . ." Government's Brief on Merits at 40-41.

The Government, however, fails to advise how the legislative or executive branch can adjudicate the issues in this specific case. The case here presented is not hypothetical. It involves a specific transfer of property to a specific pervasively sectarian school. The issues are joined between real, live adversaries with important and real questions of fact and law. Neither the legislative nor executive branch is empowered to void the grant and the contract between the Government and the Bible College. "The legislative function is inherently general rather

than particular and is not intended to be responsive to adversaries asserting specific claims or interests peculiar to themselves." *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 222 n.10 (1974).

In *Lemon* v. *Kurtzman*, *supra* at 622-23, this Court observed:

> Ordinarily political debate and division, however vigorous or ever partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils which the First Amendment was intended to protect . . . . The potential divisiveness of such conflict is a threat to the normal political process . . . . It conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government.

(Citations omitted.)

Establishment-Clause cases reach to the very core of our basic constitutional protections. It is the special role of the judiciary to protect that fundamental right and see that it is not derogated in the normal political processes.

In *Engel* v. *Vitale*, *supra* at 429-30, this Court acknowledged the anguish, hardship and bitter strife that can come when religious groups struggle to obtain the Government's stamp of approval. The Court observed that "[t]he Constitution was intended to avert a part of this danger by leaving the government of the country in the hands of the people rather than in the hands of any monarch. But this safeguard was not enough." The founders of our country were no more willing to place religious liberty within the influence of the ballot box

than they were to let these vital matters of personal conscience depend upon a succession of monarchs. They insisted it be specifically protected in the Bill of Rights.

Thus, in their insistence to relegate Establishment-Clause rights to the ballot box, to the halls of Congress, or to the bureaucratic maze of the federal government, Petitioner and the Government fail to comprehend what this Court declared in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943): "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."

Historically the Bill of Rights was conceived as a part of the checks and balances between our three branches of government. In a letter to James Madison on October 17, 1788, Thomas Jefferson objected to Madison's opinion that a Bill of Rights would be ineffective. Jefferson said Madison had omitted to mention "one [argument] which has great weight . . . , the legal check which [a Bill of Rights] puts into the hands of the judiciary." In a December 20, 1789, letter to Madison, Jefferson wrote: "I will now add what I do not like. First the omission of a bill of rights providing clearly and without aid of sophisms for religious freedom. . . ." 12 *The Papers of Thomas Jefferson* 438-42 (J.P. Boyd ed. 1958). Jefferson's letters probably led Madison to emphasize, when he presented his draft of the Bill of Rights to Congress, that the courts would enforce the limitations of the proposed amendments. B. Schwartz, 1 *The Bill of Rights: A Documentary History* 593 (1971).

D. Respondents Are Best Situated To Challenge This Property Transfer On Establishment Clause Grounds.

Courts are reluctant to let plaintiffs litigate issues implicating the rights of third parties who are in a better position to sharpen the issues because the holders of those rights may be bound by the doctrine of stare decisis. *Singleton* v. *Wulff*, 428 U.S. 106, 114 (1976).

Like any rule, however, this prudential rule should not be applied where its underlying justification is absent. *Id.* at 114-15. In *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), this Court considered the general rule that a party may not attack government action on the ground that it might infringe on some third party. It held that the general rule was outweighed by the need to protect fundamental rights in a situation in which it would be difficult for the persons whose rights are asserted to present their grievance before any court. *Id.* at 124-25.

This Court has held that an association may have standing solely as the representative of its members if it claims they have been injured in fact or are threatened with injury if the members themselves could have brought suit. So long as the nature of the suit does not require the individual participation of each of the members, the organization may be an appropriate representative of its members. *Warth* v. *Seldin*, *supra* at 511. In this case Americans United represents its members, including those who reside in Pennsylvania, where the property in question is located. Doerr Deposition at 27 and Binns Deposition at 20.

In addition Respondent Americans United has been recognized as having a national role in church-state litigation; as being one of three dominant groups litigating church-state issues; as helping impose "an im-

pressive degree of order and stability on church-state litigation;" and as being exclusively concerned with questions of church-state separation since its founding in 1947. F. Sorauf, *The Wall of Separation* 31-60 (1976).

In his concurring opinion in this case Judge Rosenn of the Third Circuit noted that "Americans United is likely to be the best available plaintiff. If they do not have standing, it is probable that the transfer, and other similar transfers . . . would be placed beyond judicial review. In respect to such actions, the Establishment Clause would be rendered virtually unenforceable." 619 F.2d at 268.

Individual Respondents are taxpayers and citizens entitled to protection of the Establishment Clause, and they are also practicing clergymen. Gunn Deposition at 5-10; Doerr Deposition at 5-6; Settembrini Deposition at 4-12; Binns Deposition at 4-18. As credentialed clergymen of their respective denominations, the individual Respondents find the Government action here challenged especially repugnant to their rights under the Religion Clause of the First Amendment.

Thus Respondent Americans United and the four individual Respondents have the unique attributes and purposes in the area of church-state affairs to litigate Establishment Clause issues. They possess the knowledge and resources to present sincerely and responsibly to the courts a vigorously argued case. *United States* v. *SCRAP*, *supra* at 699 (Mr. Justice Blackmun and Mr. Justice Brennan concurring.)

Respondents submit that the decision of the Third Circuit in this case is correct because to deny their standing denies relief to those seeking the intervention of the

only branch of government that historically has protected against and redressed violations of our treasured Bill of Rights.

To paraphrase Mr. Justice Blackmun, must our law of standing be so rigid and our procedural concepts so inflexible that we render ourselves helpless to redress claimed violations to our most basic and fundamental rights? *Sierra Club* v. *Morton*, 405 U.S. 727, 755 (1972) (Mr. Justice Blackmun dissenting). As Judge Rosenn in this case at the Third Circuit noted: "[T]he First Amendment, with its protections of fundamental rights, must be enforceable by the judicial branch of government, for it is by its very nature and terms designed to protect against possible abuse by the political branch." 619 F.2d at 266 (concurring opinion). Petitioner and the Government acknowledge that if these Respondents are not given standing, no one probably will have the right to obtain protection of the arm of government, the judiciary, which Jefferson envisioned to be the chief bulwark of the Bill of Rights.

The Court of Appeals quoted Mr. Justice Harlan for the proposition that " 'freedom from establishment is a right that inheres in every citizen, thus any citizen should be permitted to challenge any measure that conceivably involves establishment.' " *Id.* at 265, quoting Mr. Justice Harlan's dissent in *Flast* v. *Cohen*, *supra* at 114. As the court below stated, "[I]t may well be that the Establishment Clause should be enforceable at the demand of every citizen who claims injury to an interest protected thereby." *Id.* at 266.

And as Mr. Justice Fortas observed in *Flast* v. *Cohen*:

> In terms of the structure and basic philosophy of our constitutional government, it would be difficult

to point to any issue that has a more intimate, pervasive, and fundamental impact upon the life of the taxpayer — and upon the life of all citizens.

Perhaps the vital interest of a citizen in the establishment issue, without reference to his taxpayer's status, would be acceptable as a basis for this challenge. We need not decide this. But certainly, I believe, we must recognize that our principle of judicial scrutiny of legislative acts which raise important constitutional questions requires that the issue here presented — the separation of state and church — which the Founding Fathers regarded as fundamental to our constitutional system — should be subjected to judicial testing. This is not a question which we, if we are to be faithful to our trust, should consign to limbo, unacknowledged, unresolved, and undecided.

392 U.S. 115-116 (concurring opinion).

CONCLUSION

This Court should affirm the judgment of the Court of Appeals.

Respectfully submitted,

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Office-Supreme Court, U.S.
FILED
MAY 9 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-327

In the Supreme Court of the United States

OCTOBER TERM, 1980

VALLEY FORGE CHRISTIAN COLLEGE, PETITIONER

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS

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QUESTION PRESENTED

Whether an organization dedicated to separation of church and state and four of its employees have standing, either in their capacity as taxpayers or as citizens, to challenge the federal government's sale of surplus military property to a church-related college on the ground that the sale violates the Establishment Clause of the First Amendment.*

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* The United States and the Department of Health, Education, and Welfare were defendants in the district court and appellees in the court of appeals. Pursuant to the Department of Education Organization Act, 20 U.S.C. (Supp. III) 3401 *et seq.*, the Department of Health, Education, and Welfare was abolished. Section 505(e) of the Act, 20 U.S.C. (Supp. III) 3505(e), provides that suits pending against HEW on its effective date shall survive with the Secretary of Education substituted as a party if, as here, the suit concerns governmental functions transferred to the Department of Education.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A41) is reported at 619 F.2d 252. The opinion of the district court (Pet. App. A42-A44) is not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. A45-A46) was entered on April 8, 1980. A petition for rehearing was denied on June 3, 1980 (Pet. App. A47-A48). The petition for a writ of certiorari was filed on August 30, 1980, and was granted on February 23, 1981 (J.A. 193). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Constitution and of the Federal Property and Administrative Services Act of 1949, ch. 288, 63 Stat. 377, 40 U.S.C. 471 *et seq.*, are set forth in the Appendix, *infra.*

STATEMENT

1. Procedures for disposition of surplus military property

Article IV, Section 3, Clause 2, of the Constitution vests Congress with plenary power "to dispose of" and make necessary rules and regulations respecting surplus property belonging to the United States. Under this provision, Congress enacted the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471 *et seq.*, a statute that was intended, *inter alia*, "to provide for the Government an economical and efficient system for * * * the disposal of surplus property" (40 U.S.C. 471). "Surplus property" is defined by statute to include any property that exceeds the needs of the particular federal agency responsible for the property and that is "not required for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the [General Services] Administrator" (40 U.S.C. 472(g)).

If a military department, such as the Army, Navy or Air Force, determines that it no longer needs a particular piece of property, it first offers the property to the other military departments and the United States Coast Guard. If none of those departments has a need for the property, the Secretary of Defense so reports to the Armed Services Committees of the Senate and House of Representatives. See 10 U.S.C. 2662. If Congress takes no action with respect to the property, the military department notifies the General Services Administration

(GSA), which offers the property to other agencies of the federal government. If there is no need for the property at any such agency, GSA takes steps to dispose of the surplus property in consultation with state and local governments in the geographic area involved, as well as the Department of Health, Education, and Welfare (now the Department of Health and Human Services and the Department of Education), the Department of the Interior, the Federal Aviation Administration, and committees of citizens from the affected community (C.A. App. 228-231).[1]

The Secretary of Health, Education, and Welfare (now the Secretary of Education) is authorized to assume responsibility for surplus federal property and to convey such property, "including buildings, fixtures, and equipment situated thereon, as * * * needed for school, classroom, or other educational use * * *" (40 U.S.C. 484(k)(1)). The Secretary may sell or lease such property "to the States and their political subdivisions and instrumentalities, and tax-supported educational institutions, and to other nonprofit educational institutions which have been held exempt from taxation" under the Internal Revenue Code (40 U.S.C. 484(k)(1)(A)). In fixing the consideration for sale of surplus property to a private nonprofit educational institution, the Secretary must "take into consideration any benefit which has accrued or may accrue to the United States from the use of such property" by the purchasing institution (40 U.S.C. 484(k)(1)(C)).

Pursuant to this statute, the Secretary has promulgated regulations (34 C.F.R. Part 12; see also 45 C.F.R. Part 12) designed to "foster and assure maximum utilization of surplus real property for educational purposes * * *" (34 C.F.R. 12.3(a)). The regulations require the Secretary to give reasonable publicity to the avail-

[1] "C.A. App." refers to the joint appendix in the court of appeals.

ability of surplus real property that is suitable for educational purposes (34 C.F.R. 12.6) and to select purchasers proposing a use of the property that provides "the greatest public benefit" (34 C.F.R. 12.5). Purchasers must demonstrate that they are willing and able to assume immediate care, custody and maintenance of the property, are financially able to assume all administrative expenses incident to the transfer, and are financially able to carry out the approved program for use of the property (34 C.F.R. 12.8). Finally, the regulations provide that nonprofit educational institutions purchasing surplus property are entitled to a reduction in the purchase price expressed in terms of a "public benefit allowance." Such an allowance is "computed on the basis of benefits to the United States from the use of such property for educational * * * purposes" (34 C.F.R. 12.9). In determining the amount of the allowance in a particular case, the Secretary considers factors such as the educational institution's accreditation, public service training programs, plans to introduce new instructional programs, commitment to student health and welfare, and intention to undertake programs such as research and service to the handicapped (34 C.F.R. Part 12, Exh. A). Those factors, considered together, may entitle a purchasing institution to a 100% public service allowance that enables it to acquire the property without further cash payment to the United States.[2]

2. The surplus military property at issue in this case

In 1942, the Department of the Army acquired approximately 181 acres of land, together with a small

[2] In light of the special economic problems created by the closing of military bases in particular communities, dispositions of surplus military real estate also require notification to the Office of Economic Adjustment and the President's Economic Adjustment Committee. The Economic Adjustment Committee works with the affected community and encourages it to develop a Reuse Plan for the property to minimize adverse effects of the government's disposition. See C.A. App. 230-236.

easement interest, in Chester County near Phoenixville, Pennsylvania, about 30 miles northwest of the City of Philadelphia. The fee interest and easement cost $41,553. During the next several years, the land was improved with hospital buildings, warehouses, administration buildings, and barracks at a total cost of $13,046,048. For 30 years thereafter, the Army used the completed facility, known as the Valley Forge General Hospital, to provide medical care for members of the armed services (C.A. App. 237-238).

In April 1973, the Secretary of Defense announced plans to consolidate, reduce or eliminate a large number of military installations in the United States, and included in his announcement the proposed closing of Valley Forge General Hospital by July 1974. In a report to Congress, the Army explained that the decision "was reached from the standpoints of declining workload, reduction of end strength of the Army, economy, and the scheduled availability of modern medical facilities at other Army hospitals" (C.A. App. 237-238). Since the property was excess with respect to the needs of the military, it was reported to the General Services Administration for disposition (*ibid.*). After giving notice of the availability of the property to the agencies of the federal government, GSA declared the property to be surplus (*id.* at 228-231).

Following the closing of the Valley Forge General Hospital in 1974, care and custody of the 181 acre tract, and the buildings and equipment on it, became the financial responsibility of the Department of the Army (C.A. App. 231). Between 1974 and 1976, several government agencies, including the Department of Defense, GSA, HEW, the Department of Interior, and the President's Economic Adjustment Committee, reviewed plans to dispose of the property (*id.* at 228-231). After an initial unsuccessful attempt to convey the property to the Commonwealth

of Pennsylvania,[3] the 181 acre tract was divided among several public recipients and petitioner Valley Forge Christian College.[4] The college (then known as the Northeast Bible College) purchased a tract of approximately 77 acres of land. The value of that land, as appraised prior to its conveyance, was $577,500.[5]

In its application for the 77 acre tract (C.A. App. 247-261), the college stated that it was a nonprofit educational institution operating under the supervision of

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[3] The Department of Education advises us that notice of the availability of the surplus property was given to the Governor of Pennsylvania, the mayor and other local officials in the county, regional planning authorities, and residents within the community. GSA and HEW originally sought to convey the bulk of the property to the Commonwealth of Pennsylvania for a Veterans' Hospital, with certain smaller parcels allocated to surrounding school districts and a junior college. HEW gave the Commonwealth an interim permit to utilize the land but did not convey title because the Commonwealth could not demonstrate financial ability to carry through its projected use of the property. Subsequently, the legislature failed to appropriate funds for the hospital and the Commonwealth vacated the property.

[4] The Department of Education advises us that 34 acres were conveyed to the Phoenixville School District for general educational use. A consortium of other school districts received an additional 15 acres for special educational purposes. The General Services Administration conveyed 55 acres of the tract for park and recreational use, upon approval of the Department of the Interior. The Valley Forge Christian College purchased the remaining land.

[5] The appraiser noted in his report that the land had a per acre value, but no value could be placed on its buildings and fixtures. He observed (C.A. App. 242-243):

> [T]hese buildings were constructed several years ago for one purpose only, that is for an army hospital, and it is my feeling that they have little or no use, generally speaking, for other purposes. * * * [T]he expense involved in razing, regrading, repaving, relocating roads and streets, changing and relocating water/sewer lines, etc.[,] would be tremendous. * * * The value of * * * [the] buildings one can utilize would be offset by the renovations required plus the razing costs of the buildings not needed.

certain divisions of a religious order known as the Assemblies of God (*id.* at 249). The college intended to use the land to conduct "a program of education * * * meeting the accrediting standards of the State of Pennsylvania, The American Association of Bible Colleges, the Division of Education of the General Council of the Assemblies of God and the Veterans Administration" (*id.* at 250). The college further asserted that its graduates engaged in work in the ministry, counselling, teaching, youth supervision, business, and state and federal government administration. Other students pursued post-graduate training at a wide variety of public and private universities. The college represented that, if it obtained the property, it would make "additions to its offerings in the arts and humanities" and would strengthen its "psychology" and "counselling" courses to provide services in inner city areas. It also offered to encourage academic research and independent study at the new campus (*id.* at 250, 261).

The college stated in its application that it planned to make use of certain existing buildings on the 77 acre tract as administrative offices, classrooms, laboratories, libraries, and housing facilities (C.A. App. 255). Renovation of the buildings and construction of new structures would be achieved by the employment of local tradesmen and the recruitment of volunteers (*id.* at 256). The estimated cost of setting up the college on its new campus and renovating existing buildings was $800,000 (*id.* at 259-260). This amount would be derived from various college councils, alumni associations, and gifts (*ibid.*). In emphasizing its need for a new campus, the college noted the "overcrowd[ing]" of its current campus, the existence of certain "fire hazards" on its property, and its inability to find alternative locations for a new campus (*id.* at 257).

Upon approval of the college's application in August 1976, HEW granted the college a deed for the 77 acre tract, which reflected a 100% public benefit allowance

(C.A. App. 262-275). The deed conveyed the land in fee simple with certain conditions subsequent, which required the college to use the land for 30 years solely for the educational purposes described in the application. The college was forbidden to sell or encumber the land except under stated circumstances, and was required to comply with applicable federal civil rights legislation (*id.* at 266-272). Finally, the deed provided that the United States retained the right during periods of emergency to regain possession and use of the property and any improvements on it (*id.* at 272-273). In conjunction with this conveyance of land, HEW also conveyed to the college certain surplus personal property located on the premises (*id.* at 276-309). Following these transfers of real and personal property, the college relocated its campus on the 77 acre tract and expended funds needed to convert the former hospital to a college (*id.* at 15).

3. Proceedings in the district court

In September 1976, respondents Americans United For Separation of Church and State, Inc., and several of its employees, learned of the property conveyance through a news release (C.A. App. 159, 194). They brought suit to challenge the conveyance two months later. In an amended complaint filed in the United States District Court for the Eastern District of Pennsylvania, Americans United described itself as a non-profit organization made up of 90,000 taxpayer members and located in the District of Columbia. The complaint asserted that "[e]ach of these taxpayer members will be affected just as though they were a separate individual plaintiff * * * and each individual member would be deprived of the fair and constitutional use of his (her) tax dollar for constitutional purposes in violation of his (her) rights under the First Amendment of the United States Constitution" (J.A. 10). In addition, the complaint named as plaintiffs four individual members and officers of the organization, who resided in Maryland and Virginia (*ibid.*).

In its charging paragraphs, the complaint recited that the United States had conveyed 77 acres of realty, with buildings thereon, to Valley Forge Christian College; that the college was religious in its orientation; and that the grant of property to the college was in violation of the Establishment Clause of the First Amendment (J.A. 11).[6] The complaint sought equitable relief, including a declaration that the grant of land and buildings to the college was null and void, as well as an order compelling the college to convey all right and title to the property "back to the United States Government * * *" (*id.* at 12).

In pretrial depositions, the four named plaintiffs explained the basis for their challenge to the conveyance. Andrew L. Gunn, Executive Director of Americans United, stated that his rights as a taxpayer and citizen were violated by the transfer (deposition of March 7, 1978, at 10-12). He asserted that his tax bill would have been less during 1976 if the government had not transferred the property (*ibid.*). He acknowledged, however, that the injury he suffered was "shared in common" with "the other taxpayers of the country" (*id.* at 26).[7]

Unlike Gunn, Edward E. Doerr, another employee of Americans United, doubted whether there was any "connection between the taxes in a particular year and the

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[6] Due to its disposition of the present case on standing grounds, the district court made no findings concerning the pervasiveness of religious instruction at the college. However, the college's catalogue of courses, and its interrogatory answers, show that it offers both religious and secular courses and receives students of various religious backgrounds (J.A. 122-125). There appears to be no dispute, however, that the college places considerable emphasis on religious instruction and values in some of its classes and that it prepares some of its students for the ministry.

[7] Gunn also asserted that "I as a taxpayer should not be forced to make contributions to another religion or to any religion" (deposition of March 7, 1978, at 29). He added that "my religious liberty is being trampled upon because the Government is taking—is fostering and promoting religion. It is not the business of the Government to do this" (*ibid.*).

disposition the Government makes of public property" (deposition of March 7, 1978, at 13). Nonetheless, he viewed himself as an "owner," along with the rest of the public, of all government property, and asserted that he is "injured when that property is disposed of improperly by the Government" (*id.* at 13-14). He acknowledged that his injury "is an injury * * * shar[ed] in common with other members of the public" (*id.* at 14, 35).[8] Doerr also stated that the value of the property conveyed was not material, since he would be "offended" by any transfer (*id.* at 29). He asserted: "I think when a constitutional principle is at stake, even a rather small conveyance of Government property is significant and offends me" (*id.* at 34).

Mallary Binns, Director of Operations of Americans United, repeated the view that he had a "vested interest" in federal property and that his rights as a "taxpayer" and "citizen" are violated by a conveyance to a religious organization. Those rights, according to Binns, are held in "common to taxpayers in general" (deposition of March 7, 1978, at 18-19). Binns also asserted that he would feel aggrieved by a transfer of property of any value: "If the property were worth $2,000, the loss in principle of the Government giving property of value to a religious institution would be wrong * * *[;] I wouldn't draw a line" (*id.* at 36).

Gioele Settembrini, Assistant to the Director of Americans United, asserted that "every citizen is injured" when government property is conveyed to a sectarian institution (deposition of March 7, 1978, at 13). Accordingly, a taxpayer is "damaged whenever a taxpayer doesn't draw benefit from a property which was given to an institution which is not owned by the general public" (*id.* at 15). When asked whether his interest in the

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[8] When asked whether there is "anything unusual about your loss as a taxpayer that's different from all the rest of the taxpayers," Doerr stated "[p]robably not" (deposition of March 7, 1978, at 36).

controversy differed from that of society at large, Settembrini stated (*id.* at 20): "I represent society."

On motion of the defendants, the district court granted summary judgment and dismissed the complaint (Pet. App. A42-A44). The district court found that the plaintiffs lacked standing to sue as taxpayers under *Flast* v. *Cohen*, 392 U.S. 83 (1968). In reaching that conclusion, the court observed that the plaintiffs challenged a transfer of property authorized by Article IV, Section 3, Clause 2, of the Constitution, and not an exercise of Congress' power to tax and spend. The court also noted that plaintiffs "failed to allege that they have suffered any actual or concrete injury beyond a generalized grievance" common to other citizens (Pet. App. A43). Accordingly, *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208 (1974), stood as an additional barrier to suit (Pet. App. A44).

4. The decision of the court of appeals

By a divided vote, the court of appeals reversed the district court's judgment and reinstated the complaint (Pet. App. A1-A41). All three members of the panel agreed that the plaintiffs lacked standing to sue in their capacity as "taxpayers." Citing *Flast* v. *Cohen*, *supra*, the court held that a taxpayer is a proper party to allege the unconstitutionality "only of exercises of congressional power under the taxing and spending clause of Art. I, § 8 of the Constitution" (Pet. App. A15). The court added that *Flast* has drawn a sharp distinction "between attacks by taxpayers on spending programs as such and attacks on other kinds of programs" (*id.* at A16-A17).

Nonetheless, the court of appeals found that the plaintiffs had standing to sue in their capacity as citizens to redress an " 'injury in fact' to their shared individuated right to a government that 'shall make no law respecting the establishment of religion' " (Pet. App. A18). The court characterized their interest in the following terms: "the challenged action injures their important con-

cern in the separation of church and state and * * * [thus] is within the zone of interests protected by the Establishment Clause" (*id.* at A21). That interest, according to the court, was sufficiently "particular" and "concrete" to give rise to an actual case or controversy under Article III of the Constitution (*id.* at A27). The court added that "it is at the very least arguable that the Establishment Clause creates in each citizen a 'personal constitutional right' to a government that does not establish religion" (*id.* at A28-A29). Thus, "it may well be that the Establishment Clause should be enforceable at the demand of every individual who claims injury to an interest protected thereby" (*id.* at A29).

In a concurring opinion Judge Rosenn asserted that, in cases such as the present case, Establishment Clause violations do not "have an individual impact sufficient to confer standing in the traditional sense" (Pet. App. A33). Accordingly, in view of the perceived "need to provide a judicial forum" (*id.* at A35), Judge Rosenn would grant standing without a showing of discrete individual harm. Although Judge Rosenn acknowledged that, in the present context, "it is possible to conceive of economic interests that might give rise to a plaintiff who meets traditional standing requirements," he concluded that "Americans United is likely to be the best available plaintiff" (*id.* at A34).

Judge Weis dissented. While he agreed with the majority that the plaintiffs lacked standing to sue as taxpayers (Pet. App. A35), Judge Weis disagreed that they had alleged sufficient injury to themselves to have standing to sue as citizens. Judge Weis concluded that plaintiffs did not have standing because "a generalized grievance brought by concerned citizens seeking to enforce a particular constitutional guarantee has been deemed too abstract to satisfy the injury in fact component of standing" (*id.* at A36). He reasoned that this Court's decisions in *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, and *United States* v. *Richardson*, 418 U.S.

166 (1974), precluded litigation based on abstract objections to the constitutionality of the government's conduct. Judge Weis added that the plaintiffs "do not allege any direct injury that the transfer of the property has inflicted upon them or any direct benefit that will accrue to them as a result of the requested judicial action" (Pet. App. A39). In short, like the complaining parties in *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S. at 217, the plaintiffs here alleged only a generalized interest "shared by all citizens"—an interest not cognizable in federal court under Article III of the Constitution.

SUMMARY OF ARGUMENT

I.

The complaint in this case describes unambiguously the grievance that plaintiffs seek to litigate. The complaint alleges that each of the taxpayer members of Americans United For Separation Of Church And State would be injured by the government's sale of surplus military property to Valley Forge Christian College because "each individual member would be deprived of the fair and constitutional use of his (her) tax dollar * * * in violation of his (her) rights under the First Amendment" (J.A. 10). As the district court and each panel member in the court of appeals agreed, however, plaintiffs do not have standing to sue in their capacity as "taxpayers."

Frothingham v. *Mellon*, 262 U.S. 447 (1923), sets forth the general rule applicable to taxpayer suits. As a general proposition, taxpayers do not have standing to challenge governmental expenditures alleged to be in violation of the Constitution because a taxpayer's "interest in the moneys of the Treasury * * * is comparatively minute and indeterminable." The effect on future tax liability of any governmental disbursement "is [so] indefinite" as to be a "matter of public and not of individual concern" (*id.* at 487). These principles apply a

fortiori to the present taxpayer suit, which challenges a sale of military property designated as surplus—not annual disbursements of tax funds from the federal treasury.

Although this Court's decision in *Flast* v. *Cohen*, 392 U.S. 83 (1968), "slightly lowered" the barrier to taxpayer suits (*United States* v. *Richardson*, 418 U.S. 166, 173 (1974)), it prescribed definite limitations to prevent an inundation of taxpayer litigation. Plaintiffs in this case wholly fail to satisfy the *Flast* criteria for standing to sue. In unequivocal terms, *Flast* provides that "a taxpayer will be a proper party to allege the unconstitutionality *only* of *exercises of congressional power* under the *taxing and spending clause of Art. I, § 8*, of the Constitution" (392 U.S. at 102; emphasis supplied).

Plaintiffs fail to meet the narrowly defined standards prescribed in *Flast* because they attack an action of the executive branch (a sale of surplus property by HEW), rather than an enactment of Congress. As this Court recently has confirmed, plaintiffs may not challenge "the action[s] of the Executive Branch" on a taxpayer theory. *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 228 (1974). Plaintiffs fail to satisfy the *Flast* standard for a separate and independent reason. Instead of challenging government action under "the Taxing and Spending Clause of Art. I, § 8," as required by *Flast*, they challenge government action under the property clause of Article IV, Section 3. This is an additional barrier to suit. See *United States* v. *Richardson*, *supra*, 418 U.S. at 175 ("[a]lthough the status [plaintiff] rests on is that he is a taxpayer, his challenge is not addressed to the taxing or spending power * * *").

This Court should decline plaintiffs' invitation to extend *Flast*. *Flast* deliberately prescribed limitations on taxpayer actions to prevent a flood of such suits. Both *Richardson* and *Schlesinger* refused to expand the scope of taxpayer standing and adhered to the limits prescribed in *Flast*. In any event, the present case offers no occa-

sion to enlarge taxpayer standing. Plaintiffs here challenge not the disbursement of tax revenues from the Treasury, but rather the decision of a government agency to sell a parcel of surplus property. They have no objection to the original use of their tax dollars. They object only to the identity of the purchaser with whom the government contracted after the useful life of the property was exhausted. Return of the property to the government, so that it could be sold to another nonprofit institution on similar terms, would not increase or preserve the government's wealth. To the contrary, it is likely to have quite the opposite effect. In these circumstances, the relationship between plaintiffs' status as taxpayers and the issue they seek to litigate is so remote, speculative and tenuous as to provide "no 'logical nexus' " sufficient to predicate standing to sue. *United States* v. *Richardson*, *supra*, 418 U.S. at 175, quoting *Flast* v. *Cohen*, *supra*, 392 U.S. at 102.

II.

Having found that plaintiffs lack standing to sue as "taxpayers," the court of appeals should have affirmed the district court's dismissal of the complaint. The complaint alleges no other ground upon which standing to sue could be predicated. The complaint contains no mention of any individual harm that plaintiffs purportedly suffered as a consequence of the government's sale of surplus military property. There is no suggestion that the sale impaired their organizational activities, interfered with their right to worship or not to worship, or imposed on them uninvited ideas, orthodoxies, or religious observances. Indeed, if plaintiffs had not read about the sale of property in the newspaper, they never would have known that it occurred. The only effect of the transaction on plaintiffs was that it provoked their philosophical disapproval. And the abstract objection that they raised is no different than the objection that could have been raised by any other citizen.

Nonetheless, the court of appeals concluded that plaintiffs have standing to sue in their capacity as "citizens" because the action of the government infringed their right to live under a "government that does not establish religion" (Pet. App. A29). That theory of citizen standing, however, clashes with the decisions of this Court. This Court has held that plaintiffs may not challenge alleged violations of the Establishment Clause on a general citizen standing theory. For example, in *Doremus* v. *Board of Education*, 342 U.S. 429 (1952), the plaintiffs sued, *inter alia*, in their capacity as "citizens" to contest a state statute authorizing teachers to read from the Bible in the public schools. The governmental action challenged in *Doremus* denied the plaintiffs an opportunity to live under a "government that does not establish religion." This Court nonetheless ruled that standing was lacking, since the "citizen" plaintiffs alleged an abstract "religious difference" rather than palpable personal harm (*id.* at 434-435). *Doremus* confirms that plaintiffs do not have standing to sue in their capacity as citizens simply because they believe the government has taken some action that tends to establish religion. They must show particularized injury to themselves before invoking the judicial power.

Any remaining support for citizen standing in cases of this kind disappeared with the Court's rulings in *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, and *United States* v. *Richardson*, *supra*. Those decisions hold that claims of constitutional violations, which affect all citizens in the same way and do not inflict personal injury, may not be litigated in federal court. If parties wish to press abstract assertions that the government has wronged its citizens as a group, they must present their claims to the legislative and executive branches—branches that, like the judiciary, are responsible for enforcing the Constitution, but that, unlike the judiciary, are responsible for protecting all citizens against wrongs to the people as a whole.

Prudential considerations militate against recognition of general citizen standing. If this Court were to accept the notion that any citizen may bring suit to vindicate "important" constitutional guarantees without alleging personal injury, there would be an outpouring of citizen complaints. Federal courts would be required to assume a continuing oversight role with respect to the activities of the co-equal branches of government. While the number of such suits would dramatically increase, the vigor and quality of advocacy would decline, since the plaintiffs would no longer be motivated by a direct personal stake in the outcome of the litigation. This Court repeatedly has referred to these prudential concerns as grounds for strictly enforcing the Article III standing requirement. It should do so once again in the present case.

ARGUMENT

PLAINTIFFS LACK STANDING TO SUE BECAUSE THEY HAVE FAILED TO ALLEGE INJURY TO THEMSELVES AS A RESULT OF THE CLAIMED UNCONSTITUTIONAL CONDUCT

Introduction

As this Court frequently has observed, no principle is more fundamental to the federal judiciary's proper role in our system of government than the constitutional limitation of federal court jurisdiction to "actual cases or controversies." *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 37 (1976). The framers of the Constitution deliberately withheld from the federal courts power to act as a "Council of Revision," with general authority to review the constitutionality of the actions of the legislative and executive branches. See *United States* v. *Richardson*, 418 U.S. 166, 179 (1974); see also *id.* at 189-190 & n.9 (Powell, J., concurring). The Article III case or controversy requirement traditionally has meant that federal courts may pass on the

constitutionality of an action of a co-equal branch of government only when the constitutional issue is tendered by a plaintiff with standing to sue—that is, by a plaintiff who alleges actual definable injury to himself. Thus, the power to adjudicate the constitutionality of governmental action is "legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy." *Chicago & Grand Trunk Ry.* v. *Wellman*, 143 U.S. 339, 345 (1892). This is but a reflection of "the proper—and properly limited—role of the courts in a democratic society." *Warth* v. *Seldin*, 422 U.S. 490, 498 (1975).

This Court's decisions construing the Article III limitation on federal jurisdiction establish that a plaintiff claiming standing to sue "must show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 99 (1979). This requires an allegation of " 'distinct and palpable injury to himself' * * * that is likely to be redressed if the requested relief is granted" (*id.* at 100, quoting *Warth* v. *Seldin, supra*, 422 U.S. at 501). Moreover, even when a case falls within these constitutional boundaries, "a plaintiff may still lack standing under the prudential principles by which the judiciary seeks to avoid deciding questions of broad social import where no individual rights would be vindicated * * *" (*id.* at 99-100).

The requirement of concrete personal injury assures that plaintiffs do not seek to employ federal courts "as a forum in which to air * * * generalized grievances about the conduct of government" (*Flast* v. *Cohen*, 392 U.S. 83, 106 (1968)), and protects "the judicial process from becoming no more than a vehicle for the vindication of the value interests of concerned bystanders" (*United States* v. *SCRAP*, 412 U.S. 669, 687 (1973)). Thus, "mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the [plaintiff] organization is in evaluating the problem," is not sufficient

to confer standing to sue. *Sierra Club* v. *Morton*, 405 U.S. 727, 739 (1972). "Abstract injury" (*O'Shea* v. *Littleton*, 414 U.S. 488, 494 (1974)) and "abstract concern with a subject that could be affected by an adjudication does not substitute for the concrete injury required by Art. III" (*Simon* v. *Eastern Kentucky Welfare Rights Organization*, *supra*, 426 U.S. at 40). Absent a demonstration of particularized harm, strongly felt convictions about the subject matter of a suit do not confer standing because "[e]motional involvement in a lawsuit is not enough to meet the case-or-controversy requirement * * *." *Ashcroft* v. *Mattis*, 431 U.S. 171, 173 (1977).

These principles apply with particular force when a plaintiff attempts to litigate general grievances about the operation of the government that are shared in substantially equal measure with all other citizens. When all citizens share a common interest in the issue tendered by the complaint, redress is properly sought through the political process. See *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 220 (1974) ("standing to sue may not be predicated upon an interest * * * which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share"); *United States* v. *Richardson*, *supra*, 418 U.S. at 176-179. Remitting plaintiffs who purport to "represent society" (see page 11, *supra*) to their political remedies does not depreciate the importance of the constitutional principles they assert. Rather, it gives proper recognition to the proposition that the political branches "are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, Kansas & Texas Ry.* v. *May*, 194 U.S. 267, 270 (1904).

As we demonstrate in this brief, the court of appeals' recognition of standing to sue in the present case is alien to the principles summarized above and has the necessary effect of expanding judicial power beyond recognized constitutional and prudential limits. The govern-

ing decisions of this Court establish that the plaintiffs in this case do not have standing to sue either in their capacity as "taxpayers" or as "citizens."[9]

[9] In their brief in opposition in this Court (Br. in Opp. 4-8, 15-19) plaintiffs devote substantial argument to the merits of their complaint. Their submission appears to be that, in view of the serious violation of the Establishment Clause that they perceive, it is simply inconceivable that they should be denied standing to sue. That line of argument, however, is inconsistent with this Court's decisions. See *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S. at 227: "The assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing." This Court has not hesitated to apply traditional rules of standing simply because a particular plaintiff alleges a violation of the Establishment Clause. See *Doremus* v. *Board of Education*, 342 U.S. 429, 432-435 (1952).

We note in passing, however, that plaintiffs' view of the merits of their complaint is based on a misunderstanding of the relevant facts. This is not a case involving donation of federal funds to a pervasively sectarian institution. The government entered into a contract of sale in this case after offering the surplus military property to a variety of public and private non-profit institutions. It is immaterial that the sale contract exchanged government property for services rather than cash. The contract conveyed surplus property in exchange for valuable consideration—a promise by the college to provide secular services to the community. See C.A. App. 196: "The college will be offering many courses tailored to the needs of the community. * * * The transfer of this property is not a gift." Those services took the form of furnishing safe housing for students, increasing courses in secular subjects such as arts, humanities, and psychology, and providing training for counselors in inner city areas. See *id.* at 250. There is no reason to assume that a college, which provides both secular and sectarian instruction, cannot offer the community significant secular services. See *Roemer* v. *Maryland Public Works Board*, 426 U.S. 736, 755-759 (1976). See generally *Walz* v. *Tax Commission of New York*, 397 U.S. 664, 672-673 (1970); see also *id.* at 687-689, 692-693 (Brennan, J., concurring), 696-697 (Harlan, J., concurring). Moreover, the decisions of this Court recognize that the government may extend benefits to church-controlled institutions in exchange for the provision of certain secular services. See *Roemer* v. *Maryland Public Works Board*, *supra*, 426 U.S. at 746; *Bradfield* v. *Roberts*, 175 U.S. 291 (1899). We also observe that

I. PLAINTIFFS DO NOT HAVE STANDING AS TAXPAYERS TO CHALLENGE THE GOVERNMENT'S SALE OF SURPLUS MILITARY PROPERTY

The only basis for standing to sue asserted in the complaint in this case is the alleged harm suffered by plaintiffs in their capacity as "taxpayers." See J.A. 10.[10] However, as the district court held (Pet. App. A42-A44), and as each member of the panel of the court of appeals agreed (Pet. App. A14-A17 (Adams, J.); A34 (Rosenn, J.); A35 (Weis, J.)), the plaintiffs in this action do not have standing to sue in their capacity as taxpayers.

A. The Government's Disposition Of Surplus Military Property, Originally Purchased In 1942, Had No Definable Impact On Plaintiffs' Economic Interests As Taxpayers

Plaintiffs do not specify in their complaint how they were injured in their capacity as taxpayers by the government's sale of surplus military property. However, in their depositions, they claimed that any improper disposition of government property affects them because they have a stake, along with all other citizens, in the total corpus of federal property (see pages 9-11, *supra*). Thus, they maintain that they have been injured despite the fact that the property was purchased in 1942, served

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the relief that plaintiffs seek in this case—rescission and return of surplus property to the United States after the college has expended substantial sums to improve that property—would appear to be foreclosed by this Court's decision in *Lemon* v. *Kurtzman*, 411 U.S. 192 (1973).

[10] The plaintiff organization, Americans United, pays no taxes (Pet. App. A4, A43; C.A. App. 192). And it claims no injury to itself apart from the injury that its taxpayer members allegedly have sustained. In these circumstances, the organization's standing rests on no firmer ground than that of its individual members. *Simon* v. *Eastern Kentucky Welfare Rights Organization*, *supra*, 426 U.S. at 40; *Warth* v. *Seldin*, *supra*, 422 U.S. at 511; *Sierra Club* v. *Morton*, *supra*, 405 U.S. at 739-741.

for over 30 years as a military hospital, and finally was sold as surplus property after it had served its intended function. They also apparently believe that they would be economically benefited as taxpayers if the property were returned to the government so that the government could make other arrangements for its disposition.[11] We submit, however, that plaintiffs have made no logical demonstration of any relationship between the challenged sale of surplus property and their economic interest as taxpayers, and that the decisions of this Court clearly preclude standing to sue on a taxpayer theory.

In *Frothingham* v. *Mellon*, 262 U.S. 447 (1923), this Court undertook a thorough examination of the subject of taxpayer standing. The taxpayer plaintiff in *Frothingham* challenged the constitutionality of the Maternity Act of 1921, which provided for annual disbursements to state authorities to reduce maternal and infant mortality and protect the health of mothers and infants. The plaintiff contended that the challenged statute took her property, under the guise of taxation, without due process of law. This Court concluded (262 U.S. at 487) that the plaintiff lacked standing to sue because

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[11] As previously noted (see pages 5-6, *supra*), this property stood vacant for two years while the government attempted to find suitable purchasers. During that period, the financial burden of maintaining and protecting the vacant 181 acre tract, its 113 buildings, and the equipment on the property, fell solely upon the government (C.A. App. 231). (The Department of Education advises us that the cost per year of maintaining the property exceeded $250,000.) A return of the property would require the government once again to assume the burden and expense of its maintenance. Rescission of the transaction also would deprive the government of the public service benefits that it now receives under the sale agreement. Finally, selecting a new purchaser would require the government to prepare another "Reuse Plan" for the property and to reassemble the various committees of government officials, community members, and advisers needed to review proposals from prospective purchasers. The numerous studies that preceded the original sales were both voluminous and expensive.

> [a taxpayer's] interest in the moneys of the Treasury—partly realized from taxation and partly from other sources—is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity.
>
> The administration of any statute, likely to produce additional taxation to be imposed upon a vast number of taxpayers, the extent of whose several liability is indefinite and constantly changing, is essentially a matter of public and not of individual concern.

The Court added that a taxpayer complaining of improper disbursements of federal funds asserts a grievance common to all, not a concrete personal injury, and therefore his complaint is not subject to judicial cognizance (*id.* at 488):

> We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act.

Following the decision in *Frothingham*, this Court confirmed that taxpayers challenging governmental action under the Establishment Clause also must allege concrete personal injury. In *Doremus* v. *Board of Education*, 342 U.S. 429 (1952), the plaintiffs brought suit as citizens and taxpayers to challenge a state statute authorizing school teachers to read passages from the Bible in the classroom. This, in plaintiffs' view, constituted a misapplication of the services of school teachers whose salaries were paid by taxpayers. The Court concluded, however, that the plaintiffs lacked standing to sue in their capacity as taxpayers (*id.* at 433-434; citation omitted):

> This Court has held that the interests of a taxpayer in the moneys of the federal treasury are too indeterminate, remote, uncertain and indirect to furnish a basis for an appeal to the preventive powers of the Court over their manner of expenditure. * * * Without disparaging the availability of the remedy by taxpayer's action to restrain unconstitutional acts which result in direct pecuniary injury, we reiterate what the Court said of a federal statute as equally true when a state Act is assailed: "The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

The *Frothingham* doctrine clearly precludes taxpayer suits of the kind before the Court in this case. The plaintiff in *Frothingham*, whose interest was found to be too remote and uncertain to predicate standing, challenged substantial and recurring appropriations from the federal treasury. In the present case, by contrast, plaintiffs challenge only a single sale of surplus military property and suggest no ground for concluding that rescission of the sale would significantly increase or preserve the wealth of the federal government.

B. This Court's Decision In *Flast* v. *Cohen* Confirms That Plaintiffs Do Not Have Standing To Sue As Taxpayers

In 1968, this Court returned to the subject of taxpayer standing and further elaborated the governing legal principles. In *Flast* v. *Cohen*, *supra*, the Court concluded that taxpayers in certain cases have standing to attack governmental action alleged to be in violation of the Establishment Clause, but limited the availability of taxpayer suits to carefully defined circumstances. Under *Flast*, a taxpayer asserting an Establishment

Clause violation "may or may not have the requisite personal stake in the outcome, depending upon the circumstances of the particular case" (392 U.S. at 101).

The plaintiff taxpayers in *Flast* brought suit to enjoin a massive and recurring expenditure of federal funds under Titles I and II of the Elementary and Secondary Education Act of 1965. As the Court observed, "almost $1,000,000,000 was appropriated to implement the Elementary and Secondary Education Act" in its first year of operation (392 U.S. at 103 n.23). In upholding taxpayer standing in *Flast*, the Court prescribed a two part "nexus" test, the first part of which is directly pertinent here. The Court articulated the first part of its test as follows (*id.* at 102; emphasis supplied):

> First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked. *Thus, a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, § 8, of the Constitution.* It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute. This requirement is consistent with the limitation imposed upon state-taxpayer standing in federal courts in *Doremus* v. *Board of Education*, 342 U.S. 429 (1952).

The quoted language from *Flast* imposes two requirements. *First*, the plaintiff must challenge "exercises of congressional power"—as opposed to exercises of executive power. *Second*, the plaintiff must challenge governmental action "under the taxing and spending Clause of Art. I, § 8, of the Constitution."[12] By prescribing these restrictions, *Flast* bars actions by a taxpayer who

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[12] *Flast* emphasized these two elements throughout. See, *e.g.*, 392 U.S. at 103, noting that the plaintiffs challenged "an exercise by Congress of its power under Art. I, § 8, to spend for the general welfare, and the challenged program involves a substantial expenditure of federal tax funds." See also 392 U.S. at 106.

seeks "to employ a federal court as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System" (392 U.S. at 106).

In subsequent decisions, this Court repeatedly has stated that *Flast* only "slightly lowered" the barrier to taxpayer suits prescribed in *Frothingham* and *Doremus*. See *United States* v. *Richardson*, *supra*, 418 U.S. at 173, 176-177; see also *id.* at 194 (Powell, J., concurring) (*Flast* created only a "stringently limited exception for federal taxpayer standing"). Accordingly, the Court has declined invitations to extend taxpayer standing beyond the limitations prescribed in *Flast*. See *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S. at 227-228; see also *id.* at 228-229 (Stewart, J., concurring).

Applying the *Flast* standard here, it is plain that plaintiffs lack standing to sue. Plaintiffs do not challenge any action by Congress. Rather, they complain solely that an executive department (the Department of Health, Education, and Welfare) selected an improper party with whom to contract under the Federal Property and Administrative Services Act of 1949. They do not contend that the Act itself is unconstitutional.[13] Accordingly, their complaint fails to allege a controversy cognizable in a taxpayer action. See *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S.

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[13] During their depositions, the plaintiffs explicitly disclaimed any intention to challenge the constitutionality of the statute. See Gunn deposition, *supra*, at 14:

> Q. You don't then complain that the Federal Property and Administrative [Services] Act of 1949 is unconstitutional?
>
> A. No.

Accord, Doerr deposition, *supra*, at 23 ("An action by Government or an application of law by Government is what I'm objecting to and not to any law itself"); Binns deposition, *supra*, at 24-25, 40 ("that law itself is not at fault"); Settembrini deposition, *supra*, at 16.

at 228, denying taxpayer standing because the plaintiffs "did not challenge an enactment under Art. I, § 8, but rather the action of the Executive Branch in permitting Members of Congress to maintain their reserve status." [14]

In addition to their failure to challenge an enactment of Congress, plaintiffs also fail to challenge governmental action under the "taxing and spending clause of Art. I, § 8, of the Constitution." *Flast* v. *Cohen*, *supra*, 392 U.S. at 102. Plaintiffs do not contest the government's expenditure of tax funds in 1942 for the purchase of land and construction of a military hospital. To the contrary, they attack HEW's decision, made over 30 years later, to dispose of surplus government property. That decision was made pursuant to the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471 *et seq.*, and was authorized by Article IV, Section 3, Clause 2, of the Constitution, which empowers Congress "to dispose of * * * Property belonging to the United States." [15] Since they challenge government action under the property clause, rather than the taxing and spending clause, plaintiffs fail to meet the prerequisites set forth in *Flast*. See *United States* v. *Richardson*, *supra*, 418 U.S. at 174-175: "The mere recital of the [plaintiff's] claims and an examination of the statute under attack demonstrate how far he falls short of the standing criteria of *Flast* and how neatly he falls within the

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[14] The courts of appeals consistently have held that taxpayers may not bring suit to challenge actions of the executive, as opposed to congressional enactments. See, *e.g.*, *American Jewish Congress* v. *Vance*, 575 F.2d 939, 944 (D.C. Cir. 1978); *Public Citizen, Inc.* v. *Simon*, 539 F.2d 211, 216-219 (D.C. Cir. 1976); *Mottola* v. *Nixon*, 464 F.2d 178, 182 (9th Cir. 1972).

[15] Decisions of the lower courts confirm that the Federal Property and Administrative Services Act is an exercise of Congress' power under Article IV, Section 3, Clause 2, of the Constitution. See, *e.g.*, *United States* v. *Cassiagnol*, 420 F.2d 868, 876 (4th Cir.), cert. denied, 397 U.S. 1044 (1970). See generally *Ashwander* v. *TVA*, 297 U.S. 288, 330 (1936); *Kleppe* v. *New Mexico*, 426 U.S. 529, 539-541 (1976).

Frothingham holding left undisturbed. Although the status he rests on is that he is a taxpayer, his challenge is not addressed to the taxing or spending power, but to the statute regulating the CIA * * *." [16]

In sum, because plaintiffs' complaint fails to satisfy the narrowly defined standards prescribed in *Flast*, the courts below correctly concluded that plaintiffs lack standing to sue as taxpayers.

C. There Is No Logical Basis For Enlarging Taxpayer Standing To Encompass Claims Of The Kind Asserted By Plaintiffs

Plaintiffs nonetheless assert (Br. in Opp. 12) that rules of standing are evolutionary in nature and should evolve in an expansive manner to facilitate judicial resolution of their claims. Apart from the fact that *Flast* itself drew definite limits to avert an unwarranted tide of taxpayer suits, and apart from the fact that this Court's decisions in *Schlesinger* and *Richardson* declined to enlarge the scope of taxpayer suits, there is no merit to this line of argument. In simple terms, the issue that plaintiffs seek to litigate in federal court has no logical relationship to their status as taxpayers. Judge Leventhal, writing for the D.C. Circuit in *Public Citizen, Inc.* v. *Simon*, 539 F.2d 211, 218-219 (1976) (footnotes omitted), explained why taxpayer status has no meaningful nexus to a controversy such as this:

> [*Flast*] was rooted in a conceptual underpinning, permitting federal taxpayer standing in a class of cases where taxpayer suits were particularly appropriate and manageable—specifically, in cases involving the validity of taxing and appropriation statutes (as distinguished from cases involving "in-

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[16] See also *Velvel* v. *Nixon*, 415 F.2d 236, 238-239 (10th Cir. 1969); *Reich* v. *City of Freeport*, 527 F.2d 666, 670, (7th Cir. 1975); L. Tribe, *American Constitutional Law* 84 & n.18 (1978) (noting that *Flast* draws a clear distinction "between challenges to spending programs as such and challenges of any other kind").

> cidental expenditure[s] of tax funds in the administration of an essentially regulatory statute"). The impact on federal taxpayers in such cases is conceptually direct, even though the dollar-and-cents consequence for a taxpayer is minimal. * * * What [plaintiffs] lack is what *Flast* found in the case of taxing and appropriations statutes—measures which in their very nature are directed toward taxpayers as a class. When what is involved is expenditures in implementation of a regulatory statute, or mere executive activity that entails some expenditures, there is no similar arrow aimed at taxpayers as a class, but an activity of concern to the public at large.

The governmental actions at issue in this case have only the most remote, indirect, and speculative relationship to plaintiffs' interests as taxpayers. While it is true that the Valley Forge General Hospital was acquired, improved, and maintained by the government with general federal revenues, those funds were spent to procure hospital services—the propriety of which plaintiffs do not challenge. There can be no serious argument that the hospital was acquired so that it could be sold to the college over 30 years later. The property was used as a military hospital for so long as the facility was needed. Once its function was fully served, the value of the hospital as a federal facility was depleted. The end product was, at least from the government's point of view, a useless collection of buildings on a useless plot of land that the government had to dispose of one way or another. That the government chose to do so by transferring a portion of the property to the college in exchange for a commitment to provide certain public benefits, rather than in some other way, simply does not affect the economic situation of a taxpayer.

Although it might be asserted that the land should have been sold for cash, rather than for public service commitments, the failure to sell the land for cash has only a speculative relationship to plaintiffs' status as

taxpayers. Even if a church-affiliated college had not purchased the property, the ultimate purchaser would, in all likelihood, have been another non-profit institution or local school district rather than a purchaser for cash. In the absence of a suitable purchaser, the government might simply have allowed the property to fall into disuse for several years. And if that occurred, the expense to the government from maintaining the property would have been substantial. Moreover, in the absence of a sale to Valley Forge Christian College, the college might have been required to purchase other land and to construct new buildings at great expense. The college would then have had to meet this expense through the solicitation of contributions that would, in turn, have been tax-deductible, thereby reducing government revenues. Finally, if the college chose not to expand, some of its students might have been forced to attend state-supported colleges or private colleges receiving federal grants, thereby increasing the demand for governmental expenditures. In short, the chain of reasoning needed to prove actual monetary harm to the plaintiff taxpayers from the action challenged in this case is far too tenuous to create the "logical nexus" required to predicate standing to sue. *United States* v. *Richardson, supra*, 418 U.S. at 175; see also *Warth* v. *Seldin, supra*, 422 U.S. at 508-509.

II. PLAINTIFFS DO NOT HAVE STANDING AS CITIZENS TO CHALLENGE THE GOVERNMENT'S SALE OF SURPLUS MILITARY PROPERTY

Having found that plaintiffs failed to allege injury to themselves as taxpayers, the court of appeals should have affirmed the judgment of the district court dismissing their complaint, for the complaint in this case alleges no other form of injury.[17] Nonetheless, the court hypothe-

[17] Paragraph 2 of the complaint (J.A. 10) asserts only that "each individual member [of Americans United] would be deprived of the fair and constitutional use of his (her) tax dollar

sized a type of harm not mentioned in the complaint and predicated standing to sue on that basis. The court began by asserting that (Pet. App. A18-A19), "[a]s a matter of primary identity, the plaintiffs are not so much taxpayers as separationists, and their main concern is not a reduction in taxes, but their declared goal of separation of church and state." The court then expressed its view of the thrust of their claim—"that the challenged action injures their important *concern* in the separation of church and state" (*id.* at A21; emphasis supplied). By the end of the court's opinion, this injury to an abstract "concern" was transformed into "a particular and concrete injury" (*id.* at A27). Building on this premise, the court announced a rule of standing that would appear to permit every citizen to complain about any governmental action believed to be in violation of the Establishment Clause (*id.* at A28-A29):

> [W]e believe it is at the very least arguable that the Establishment Clause creates in each citizen a "personal, constitutional right" to a government that does not establish religion. * * * As a cornerstone of our government, it may well be that the Establishment Clause should be enforceable at the demand of every individual who claims an injury to an interest protected thereby.

Although the court of appeals' desire for vigorous enforcement of the Establishment Clause is understandable, its reasoning cannot withstand scrutiny under Article III of the Constitution. As important as it is, the Establishment Clause creates no exception to the threshold

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for constitutional purposes in violation of his (her) rights under the First Amendment of the United States Constitution." Paragraphs 3 through 6 of the complaint (*id.* at 10-11) allege simply that each of the individual plaintiffs is a "taxpayer of the United States." In requesting equitable relief, paragraph 13 of the complaint (*id.* at 11) pleads generally that plaintiffs will suffer "irreparable harm," but no harm other than taxpayer harm is specified in the complaint.

Article III "case or controversy" requirement. Claims of violation of the Establishment Clause, like any other claims of constitutional impropriety, are matters for *judicial* cognizance if and only if the complaining party alleges concrete and particularized injury as a consequence of the violation.[18] In the absence of such an allegation, the asserted constitutional violation is a matter for redress through the executive and legislative branches, whose officials also are charged with upholding the Constitution and whose function it is to protect all citizens against wrongs to the people as a whole.

A. Plaintiffs Have Alleged No Concrete And Particularized Injury To Themselves That Separates Them From Other Citizens And Confers Standing To Sue

1. Conspicuous by its absence from the complaint, and from the court of appeals' opinion, is any indication how the government's sale of 77 acres of surplus military property in Chester County, Pennsylvania, had an actual concrete effect on any of the plaintiffs. The named plaintiffs live in Maryland and Virginia; their association is based in Washington, D.C. (J.A. 10). They learned of the sale of property only through a news release (C.A. App. 159, 194; Doerr deposition, *supra*, at 44). Had they not happened to read the newspaper article, it is a fair inference that they never would have known of the transaction. There is not the slightest suggestion that the sale interfered with their freedom to worship or to decline to worship; impaired their operations as an organization; or imposed upon them unwelcome ideas, orthodoxies, or observances. As Judge Weis noted in dissent (Pet. App. A39): "[t]he plaintiffs do not allege any direct injury that the transfer of the property has inflicted upon them or any direct benefit that will accrue to them as a result

[18] Paraphrasing *Flast* v. *Cohen*, *supra*, 392 U.S. at 101, a citizen "may or may not have the requisite personal stake in the outcome, depending upon the circumstances of the particular case."

of the requested judicial action. Their freedom of religion is not alleged to be affected in any respect." The only effect of the transaction on plaintiffs is that it provoked their disapproval on philosophical grounds. In the words of the court of appeals (Pet. App. A18-A19), they felt "concern" about "their declared goal" of separation of church and state. Or, in the words of plaintiff Doerr (see page 11, *supra*), they were "offended" by the government's action.

We do not for a moment suggest that plaintiffs' concern for constitutional government is other than a sincere and commendable one. But we do suggest that their concern is not a substitute for judicially cognizable injury. As this Court has observed, "mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself" to predicate standing to sue. *Sierra Club* v. *Morton*, *supra*, 405 U.S. at 739 (quoting *Environmental Defense Fund* v. *Hardin*, 428 F.2d 1093, 1097 (D.C. Cir. 1970)). "Abstract injury is not enough" (*O'Shea* v. *Littleton*, *supra*, 414 U.S. at 494); nor is "emotional involvement in a lawsuit" a substitute for actual concrete harm (*Ashcroft* v. *Mattis*, *supra*, 431 U.S. at 173).

Because plaintiffs in this case allege an injury to a principle they espouse, rather than a direct and tangible injury to themselves, they are not situated differently from all other citizens concerned with constitutional government. They allege no more personal interest than a citizen claiming that "In God We Trust" should be stricken from federal currency, that religious hymns should be discontinued at military ceremonies, or that the Marshal of the Supreme Court should abandon the traditional cry: "God Save This Honorable Court." No individual citizen has a direct and palpable interest in the resolution of such abstract claims.

2. Two decisions of this Court, arising under the Establishment Clause, illustrate our contention concern-

ing the citizen standing issue. In *Doremus* v. *Board of Education*, *supra*, 342 U.S. at 431-435, the plaintiffs brought suit both in their capacity as taxpayers and as concerned "citizens." They sought a declaration that a state statute, requiring the reading of passages from the Bible in school classrooms, infringed the Establishment Clause of the First Amendment. For reasons discussed on pages 23-24, *supra*, the Court found that the plaintiffs lacked standing as taxpayers. In addition, however, the Court found no basis for "citizen" standing. The Court observed that none of the plaintiffs had children currently attending the schools in question (*id.* at 432), and described their asserted grievance as a mere "religious difference" (*id.* at 434). The Court also observed that standing is "not a question of motivation," but of possession of a tangible personal interest that is injured or threatened by the unconstitutional conduct (*id.* at 435).[19]

In *School District of Abington Township* v. *Schempp*, 374 U.S. 203 (1963), the Court considered a complaint raising the same substantive issue. In *Schempp*, however, the substantive Establishment Clause claim was presented by a party having a direct personal stake in the outcome of the suit. The plaintiffs were parents of school children who were subjected to religious "exercises" in the classroom. The Court noted that "[i]t goes without saying that the laws and practices involved here can be challenged only by persons having standing to complain" (*id.* at 224 & n.9). The Court found standing to exist, however, because "the parties here are school children

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[19] In view of this Court's decision in *Doremus*, the court of appeals clearly erred in asserting that "the Establishment Clause creates in each citizen a 'personal constitutional right' to a government that does not establish religion" (Pet. App. A28-A29) and that "the Establishment Clause should be enforceable at the demand of every individual who claims injury to an interest protected thereby" (*id.* at A29). In the absence of concrete personal injury, there is no such judicially enforceable right.

and their parents, who are directly affected by the laws and practices against which their complaints are directed" (*id.* at 224 n.9). As the Court explained, the challenged laws "require religious exercises and such exercises are being conducted in direct violation of the rights" of the school children and parents (*id.* at 224). See also *id.* at 206-212 (summarizing the concrete effect of the Establishment Clause violation on the plaintiffs).

The plaintiffs in this case fall into the category of concerned bystanders barred from suit by *Doremus*. In contrast to *Schempp*, the action of the government challenged in this case has no definable effect on plaintiffs, and their "concern" does not differ from that of other citizens throughout the nation.

3. Other decisions of this Court considering the availability of citizen suits leave no room to doubt that plaintiffs, challenging constitutional violations that affect all other citizens in a substantially identical manner, are precluded from seeking redress in federal court. We briefly summarize the leading decisions below.

In *Ex parte Levitt*, 302 U.S. 633 (1937), this Court held that individual citizens lacked standing to challenge the constitutionality of the appointment of a Supreme Court Justice. Despite the manifest importance of the issue to all citizens, the Court concluded (*id.* at 634):

> The motion papers disclose no interest upon the part of the petitioner other than that of a citizen and a member of the bar of this Court. That is insufficient. It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public.

Any lingering doubts about the availability of citizen complaints to litigate generalized constitutional claims

were laid to rest by *Schlesinger* v. *Reservists Committee to Stop the War, supra.* There, the plaintiffs sued both in their capacity as taxpayers and as "citizens." They alleged that membership of certain Congressmen in the military reserves violated Article I, Section 6, Clause 2, of the Constitution, which provides that "no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office." According to the plaintiffs, membership of Congressmen in the military exposed Congress as an institution to "the possibility of undue influence by the Executive Branch" during the Vietnam conflict (418 U.S. at 212).

Despite the gravity of the harm that they alleged, this Court held in *Schlesinger* that the plaintiffs lacked standing to sue in their capacity as citizens. The Court observed that the alleged constitutional violation "would adversely affect only the generalized interest of all citizens in constitutional governance, and that is an abstract injury" (418 U.S. at 217). It added that "standing to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share. Concrete injury, whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution" (*id.* at 220-221). Most significantly, the Court rejected the assertion that the importance of a particular constitutional guarantee to our system of government was a sufficient justification for relaxing the Article III standing requirement (*id.* at 226-227):

> All citizens, of course, share equally an interest in the independence of each branch of Government. In some fashion, every provision of the Constitution was meant to serve the interests of all. Such a generalized interest, however, is too abstract to constitute a "case or controversy" appropriate for judicial resolution.

See also *id.* at 220 n.8 (collecting prior decisions of the Court rejecting general citizen claims).

This Court reiterated these principles in *United States* v. *Richardson*, *supra*. Although the plaintiffs in *Richardson* contended that the constitutional violation that they sought to redress—the use of a secret budget by the Central Intelligence Agency, allegedly in contravention of Article I, Section 9, of the Constitution—interfered with their right to cast the ballot in an intelligent fashion, this Court concluded that the asserted claim was not a claim of concrete personal injury (418 U.S. at 176-177):

> The [plaintiff's] claim is that without detailed information on CIA expenditures—and hence its activities—he cannot intelligently follow the actions of Congress or the Executive, nor can he properly fulfill his obligations as a member of the electorate in voting for candidates seeking national office.
>
> This is surely the kind of a generalized grievance described in both *Frothingham* and *Flast* since the impact on him is plainly undifferentiated and "common to all members of the public."

These decisions provide a fortiori support for the proposition that plaintiffs in this case lack standing to sue as citizens. Plaintiffs here do not contend that the legislative branch is subject to a conflict of interest that prevents it from providing them with effective representation (as in *Schlesinger*), or that use by the government of a secret budget precludes them from casting their ballot in an informed manner (as in *Richardson*). They claim only that a particular sale of surplus property, alleged to infringe the Establishment Clause, offends their organizational goal of assuring separation of Church and State. That, however, is a grievance that they share with all other citizens. And because their claim of injury is even more general and abstract than the claims rejected in *Richardson* and *Schlesinger*, it clearly is appropriate to remit them to

their remedies in the executive and legislative branches. See *Warth* v. *Seldin*, *supra*, 422 U.S. at 499; *Simon* v. *Eastern Kentucky Welfare Rights Organization*, *supra*, 426 U.S. at 40.[20]

B. The Doctrine Of Separation Of Powers, Implicit In Article III Of The Constitution, Militates Against Judicial Recognition Of Generalized Citizen Claims

1. In the view of the majority of the court of appeals, the dignity and importance of the Establishment Clause in our scheme of government is a sufficient basis to invoke the judicial power in all cases brought by citizens. Judge Adams indicated (Pet. App. A29) that the Establishment Clause is "a cornerstone of our government" that should "be enforceable at the demand of every individual who claims an injury to an interest protected thereby." [21] Judge Rosenn, in his concurring opinion, likewise referred (*id.* at A35) to "the need to provide a judicial forum for the vindication of Establishment

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[20] Following *Schlesinger* and *Richardson*, the lower courts consistently have rejected citizen complaints alleging generalized grievances of the kind asserted in this case. See, *e.g.*, *O'Hair* v. *Hill*, 641 F.2d 307, 309-310 (5th Cir. 1981) (finding no standing to assert Establishment Clause claims directed toward a provision in the Texas constitution; the court noted that the plaintiffs "pleaded no cognizable injury in relation to [their] claim. They do not allege any effect the asserted establishment of religion has had on them * * *"). Accord, *Citizens Concerned for Separation of Church and State* v. *City and County of Denver*, 628 F.2d 1289, 1301 (10th Cir. 1980); *American Jewish Congress* v. *Vance*, 575 F.2d 939, 944 (D.C. Cir. 1978). See also *Korioth* v. *Briscoe*, 523 F.2d 1271, 1276 (5th Cir. 1975) ("the thin ice which may have supported generalized citizen standing to pursue 'public actions' before *Schlesinger* seems to have melted with that case").

[21] The thrust of this statement is sufficiently clear—"every individual" is deemed a proper plaintiff to contest an "injury to an interest" protected by the Establishment Clause. The court of appeals' focus is thus on the interests inherent in the Establishment Clause, rather than the personal interests of the party invoking the judicial process.

Clause interests." These assertions, however, fail to take account of the requirements of Article III of the Constitution. In determining whether a plaintiff has standing to sue, the dispositive question is whether he has alleged direct and tangible injury to himself, not whether the constitutional principle that he seeks to vindicate is important. Thus, in *Richardson* and *Schlesinger*, citizen claims were rejected despite their manifest importance to the nation, and despite the fact that the constitutional guarantees at issue were basic to our system of government.

As this Court explained in *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S. at 227: "Our system of government leaves many crucial decisions to the political processes. The assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing." See also *United States* v. *Richardson*, *supra*, 418 U.S. at 179 (emphasis in original), which amplified this basic proposition:

> It can be argued that if respondent is not permitted to litigate this issue, no one can do so. In a very real sense, the absence of any particular individual or class to litigate these claims gives support to the argument that the subject matter is committed to the surveillance of Congress, and ultimately to the political process. * * * The Constitution created a *representative* Government with the representatives directly responsible to the constituents at stated periods * * *; that the Constitution does not afford a judicial remedy does not, of course, completely disable the citizen who is not satisfied with the "ground rules" established by the Congress for reporting expenditures of the Executive Branch. Lack of standing within the narrow confines of Art. III jurisdiction does not impair the right to assert his views in the political forum or at the polls.

These considerations are directly relevant here. While we acknowledge that the constitutional guarantee at issue in this case differs from the constitutional guarantees at issue in *Schlesinger* and *Richardson*, we submit that the nature of the injury is the same, for plaintiffs' complaint avers nothing more than a generalized grievance common to all citizens. Like the plaintiffs in *Frothingham*, *Levitt*, *Doremus*, *Schlesinger*, and *Richardson*, plaintiffs seek to vindicate the common right of citizens to live in a society in which the government complies with the Constitution. This Court's decisions leave little doubt that such claims must be vindicated in the legislative and executive branches.

It is true, of course, that the federal courts must be alert to entertain complaints from individuals alleging personal harm from government action violative of the Constitution.[22] Claims such as those in the present case, however, can be submitted to the coordinate branches of government without danger of encroachment on any individual interest. We are advised that the Department of Education is now in the process of reviewing its procedures for contracting with church-related educational institutions for the sale of surplus property. During this period of inquiry, plaintiffs may present their views to the Department of Education, and, if they are dissatisfied with the response, they may present their views both to their representatives in Congress and to appropriate officials in the Executive Branch.[23]

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[22] See *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 638 (1943): "One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

[23] At the time of the transfer of property in this case, plaintiffs submitted a letter to HEW containing only the most conclusory objection to the transfer (C.A. App. 195). They did not seek redress from Congress or otherwise pursue their political remedies (*id.* at 160-161; see also Doerr deposition, *supra*, at 43-44).

The existence of a representative government responsive to the electorate, and the continuous scrutiny of government actions by the news media, are sufficient safeguards against hypothetical abuses of the kind cited by the court of appeals such as a donation of "the Naval Observatory or the Army War College" to a religious sect (Pet. App. A30). Putting aside the constitutional implications of such a donation, any appearance of waste or misappropriation would suffice to trigger Congressional and Executive review. See 10 U.S.C. 2662 (requiring the military departments to submit specific reports to both houses of Congress before disposing of surplus property valued at more than $50,000). As Judge Weis observed (Pet. App. A40): "I, for one, am unwilling to believe that Congress, responsive as it is to public opinion, is likely to give away either the Naval Observatory or the Army War College." The voices of concerned citizens, professing to "represent society," would surely receive consideration from Congress in such a case. See *United States* v. *Richardson*, *supra*, 418 U.S. at 188-189 (Powell, J., concurring; citation omitted):

> [T]he argument that the Court should allow unrestricted taxpayer or citizen standing underestimates the ability of the representative branches of the Federal Government to respond to the citizen pressure that has been responsible in large measure for the current drift toward expanding standing. Indeed, taxpayer or citizen advocacy, given its potentially broad base, is precisely the type of leverage that in a democracy ought to be employed against the branches that were intended to be responsive to public attitudes about the appropriate operation of the government. "We must as judges recall that, as Mr. Justice Holmes wisely observed, the other branches of the Government, 'are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.'" [24]

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[24] We do not dismiss the possibility that, under certain circumstances, a plaintiff would have standing to maintain a suit such

2. A final ground for declining plaintiffs' invitation to recognize citizen standing in cases such as this—a ground closely related to the separation of powers doctrine discussed immediately above—is the traditional prudential concern for controlling the docket of federal courts and avoiding unnecessary adjudication of "questions of broad social import where no individual rights would be vindicated." *Gladstone, Realtors* v. *Village of Bellwood, supra*, 441 U.S. at 100; see also *Warth* v. *Seldin, supra*, 422 U.S. at 500.

It is easy to identify the impairment in the judicial function that would result from abandonment of traditional prudential restraints on standing. There are in this nation innumerable organizations and individuals committed to the advancement of special interests and ideological causes of all descriptions. Some of them are, quite legitimately, devoted to litigation as a principal means of attaining their ends, but they should be permitted to do so only through plaintiffs who can show the injury in fact that the standing doctrine requires. If the standing requirement were relaxed, there would be a significant increase in the number of groups and persons who would accept the opportunity to press their general interests and debate their ideological theories in

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as this challenging the transfer of surplus real property. For example, the court of appeals recognized that a rival purchaser, whose bid was rejected by the government in favor of a church-related institution, might have a personal stake in challenging the validity of the transfer. See Pet. App. A25 n.72, A34; see also *Scanwell Laboratories, Inc.* v. *Shaffer*, 424 F.2d 859 (D.C. Cir. 1970) (a disappointed bidder for a government contract has standing to obtain judicial review of a claim of illegality in the award to a rival). The potential availability of a plaintiff with an actual pecuniary stake in the issues that plaintiffs seek to litigate in this proceeding is an additional reason for denying standing to sue. See Brilmayer, *The Jurisprudence of Article III: Perspectives on the "Case or Controversy" Requirement*, 93 Harv. L. Rev. 297, 308-310 (1979). Of course, a single test case, filed by an appropriate plaintiff, should suffice to settle the applicable legal principles.

federal courts.[25] The adverse practical consequences of such a development for the federal judicial system are apparent. See *Sierra Club* v. *Morton*, *supra*, 405 U.S. at 739-740.[26]

These prudential problems arose in *Flast* v. *Cohen*, *supra*, where the plaintiffs sought to sue both in their

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[25] The standing requirement channels to the political branches all abstract claims of constitutional impropriety, without regard to the "conservative" or "liberal" cast of those claims. Thus, the standing requirement forecloses judicial review of abstract challenges to welfare legislation, as in *Frothingham*, just as it forecloses judicial review of abstract challenges to laws mandating prayer in school, as in *Doremus*.

[26] It requires no extended discussion to identify the problems that a relaxation in the standing requirement would introduce. Eliminating the requirement of a personal stake in judicial proceedings would result in an increase in the number of cases filed, but also would cause a decline in the vigor of adversary presentation in many such cases. Without a true adversary presentation, legal issues, including constitutional issues of profound importance, would come before the courts as abstractions without an adequately developed factual context. When a state or federal statute is called into question, or a state or federal executive action is challenged, it is essential that the complaining party demonstrate to the court the way the law or action actually impinges upon him. Otherwise, federal courts would be required to adjudicate the constitutionality of measures whose real effects they cannot fully appreciate or evaluate—a course akin in its disadvantages to the issuance of advisory opinions.

These problems would be particularly pronounced in challenges based on the Establishment Clause. Because this Court has acknowledged that total separation of Church and State is not possible and that "the line of separation, far from being a 'wall,' is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship" (*Lemon* v. *Kurtzman*, 403 U.S. 602, 614 (1971)), virtually every contact between the government and a religious institution potentially raises an Establishment Clause violation. The court of appeals would allow any citizens to bring suit to challenge such contacts merely by alleging that the contact "injures their important concern in the separation of church and state" (Pet. App. A21) or "injures their individual and personal constitutional right of religious liberty and separation of church and state" (*id.* at A27).

capacity as taxpayers and as citizens. As previously noted, the Court granted standing to the plaintiffs as taxpayers, but did so only pursuant to narrowly defined rules that were carefully prescribed to prevent a flood of litigation. While the plaintiffs in *Flast* advocated a "citizen" standing theory (see Pet. App. A39), and while Justice Fortas referred to the possibility that that theory would meet with approval (392 U.S. at 115-116), the majority did not accept such a view. In his dissenting opinion in *Flast*, Justice Harlan shed considerable light on the reasons for the majority's unwillingness to permit "citizens" to present "generalized grievances about the conduct of government." Because Justice Harlan's opinion is directly pertinent to the prudential issues involved in this case, we quote from it at length (392 U.S. at 129-130 n.18; emphasis in original):

> I have equal difficulty with the argument that the religious clauses of the First Amendment create a "personal constitutional right," held by all *citizens*, such that any *citizen* may, under those clauses, contest the constitutionality of federal expenditures. The essence of the argument would presumably be that freedom from establishment is a right that inheres in every citizen, thus any citizen should be permitted to challenge any measure that conceivably involves establishment. Certain provisions of the Constitution, so the argument would run, create the basic structure of our society and of its government, and accordingly should be enforceable at the demand of every individual. * * * [S]uch a doctrine of standing would * * * threaten the proper functioning both of the federal courts and of the principle of separation of powers. The Establishment Clause is, after all, only one of many provisions of the Constitution that might be characterized in this fashion. Certain of those provisions, *e.g.*, the Ninth and Tenth Amendments, would provide the basis for cases that, absent a standing question, could not readily be excluded from the

> federal courts as involving political questions, or as otherwise unsuitable for adjudication * * *. [A]ny doctrine of standing premised upon the generality or relative importance of a constitutional command would, I think, very substantially increase the number of situations in which individual citizens could present for adjudication "generalized grievances about the conduct of government." I take it that the Court, apart from my Brother Douglas, and I are agreed that any such consequence would be exceedingly undesirable.

Justice Harlan's views on the undesirability of general citizen standing have since received endorsement in decisions of this Court such as *Richardson* and *Schlesinger*. The prudential concerns expressed by Justice Harlan and by the Court in these subsequent decisions militate strongly against recognition of citizen standing in the circumstances of this case.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. Article I, Section 8, Clause 1, of the Constitution provides in pertinent part:

> The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; * * *.

2. Article III, Section 2, Clause 1, of the Constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

3. Article IV, Section 3, Clause 2, of the Constitution provides in pertinent part:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *.

4. The First Amendment to the Constitution provides in pertinent part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *.

5. Section 3(g) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 472(g), provides:

> The term "surplus property" means any excess property not required for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the [General Services] Administrator.

6. Section 203 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484, provides in pertinent part:

> (a) Except as otherwise provided in this section, the [General Services] Administrator shall have supervision and direction over the disposition of surplus property. Such property shall be disposed of to such extent, at such time, in such areas, by such agencies, at such terms and conditions, and in such manner, as may be prescribed in or pursuant to this Act.
>
> * * * * *
>
> (k)(1) Under such regulations as he may prescribe, the Administrator is authorized, in his discretion, to assign to the Secretary of Health, Education, and Welfare for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary of Health, Education, and Welfare as being needed for school, class-

room, or other educational use, or for use in the protection of public health, including research.

(A) Subject to the disapproval of the Administrator within thirty days after notice to him by the Secretary of Health, Education, and Welfare of a proposed transfer of property for school, classroom, or other educational use, the Secretary of Health, Education, and Welfare, through such officers or employees of the Department of Health, Education, and Welfare as he may designate, may sell or lease such real property, including buildings, fixtures, and equipment situated thereon, for educational purposes to the States and their political subdivisions and instrumentalities, and tax-supported educational institutions, and to other nonprofit educational institutions which have been held exempt from taxation under section 501(c)(3) of Title 26.

* * * * *

(C) In fixing the sale or lease value of property to be disposed of under subparagraph (A) * * * of this paragraph, the Secretary of Health, Education, and Welfare shall take into consideration any benefit which has accrued or may accrue to the United States from the use of such property by any such State, political subdivision, instrumentality, or institution.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1981 346898 333

Office - Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS
CLERK

No. 80-327

In the Supreme Court of the United States

OCTOBER TERM, 1980

VALLEY FORGE CHRISTIAN COLLEGE, PETITIONER

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF FOR THE FEDERAL RESPONDENTS

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REPLY BRIEF FOR THE FEDERAL RESPONDENTS *

1. Americans United devotes the first 19 pages of its brief to the question whether the sale of property involved in this case "is forbidden by the Establishment Clause of the First Amendment" (Br. 11). That, however, is not the issue before the Court. The issue is whether Americans United has standing to challenge a sale of property in which it has no inter-

* Although the United States and the Department of Education are respondents in this Court, they support the position of petitioner and accordingly file the instant reply brief in response to the contentions raised in the briefs filed by respondents Americans United for Separation of Church and State, *et al.* ("Americans United") and supporting amici. See Rules 19.6 and 35.3 of the Rules of this Court.

est and from which it has suffered no adverse effect. Whether, in the abstract, a constitutional argument can be formulated to challenge the sale has no bearing on Americans United's standing to sue. The decisions of this Court clearly reject the notion that the issue of standing to sue can be relegated to the position of a mere technicality simply because the complaining party believes that its cause of action is meritorious. See *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976) ("standing 'focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated'" (quoting *Flast* v. *Cohen*, 392 U.S. 83, 99 (1968)); *Warth* v. *Seldin*, 422 U.S. 490, 500 (1975) ("standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal"); *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 225 n.15 (1974) ("there was no occasion for the district court or the court of appeals to reach or evaluate what it saw as the merits of respondents' complaint"); *United States* v. *Richardson*, 418 U.S. 166, 174 (1974) ("[w]e need not and do not reach the merits of the constitutional attack").[1]

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[1] *Flast* v. *Cohen*, *supra*, 392 U.S. at 99, also recognizes that the threshold examination of standing to sue focuses on the party seeking to invoke the judicial process "and not on the issues he wishes to have adjudicated." The plaintiff's substantive claim is relevant in taxpayer actions only to determine whether there is a "logical nexus between the status asserted and the claim sought to be adjudicated." *Id.* at 102. See also *United States* v. *Richardson*, *supra*, 418 U.S. at 174. As explained in our opening brief, there is no logical nexus between Americans United's status and its substantive claim that would permit it to invoke the jurisdiction of a federal court. See Br. 28-30.

Moreover, the attempt of Americans United to bootstrap its way into federal court through repeated assertions about the merits of its case is unavailing because those assertions rest on a serious mischaracterization of the facts. Americans United nowhere offers record support for its contention (Br. 13, 16) that the federal government made a "gift" or "donation" to the college or has received inadequate "consideration" for the property it sold. Nor could it make such a demonstration. The record shows that Valley Forge Christian College agreed to extend significant secular benefits to the community in exchange for the property in question. The college offers various forms of secular instruction (including instruction in subjects such as English, speech, foreign languages, music, physical education, history, typing, shorthand, and elementary and advanced accounting). See J.A. 122-125. In its application for the property in question, the college committed itself to making "additions to its offerings in the arts and humanities" (C.A. App. 250) and to increasing safety and other secular benefits for students (*id.* at 255, 257). The government's premise in making the sale to the college was that the college "will be offering many courses tailored to the needs of the community" (*id.* at 196).[2] Thus, there is no merit to the assertion (Americans United Br. 11, 16-17) that the government received nothing from the sale but religious education.

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[2] Even the "Christian Service assignments," criticized by Americans United (Br. 17), offer significant secular benefits to the community. Those assignments require each student at the college to devote substantial time to activities such as "working with drug addicts" and "alcoholics," "singing for the mentally retarded," "walking mentally retarded children," and "working with physically handicapped children" (J.A. 43).

The significant secular benefits accruing to the government from the sale in question remove the sale from the category of prohibited grants or donations to religious bodies. See *Roemer* v. *Maryland Public Works Board*, 426 U.S. 736, 746 (1976) ("[i]t long has been established * * * that the State may send a cleric, indeed even a clerical order, to perform a wholly secular task"); *Walz* v. *Tax Commission of New York*, 397 U.S. 664, 672-673 (1970); see also *id.* at 687-689 (Brennan, J., concurring) (noting that religious organizations "contribute to the well-being of the community in a variety of non-religious ways, and thereby bear burdens that would otherwise either have to be met by general taxation, or be left undone, to the detriment of the community"); *id.* at 696-697 (Harlan, J., concurring); *Bradfield* v. *Roberts*, 175 U.S. 291 (1899) (upholding the extension of public funds to a church-operated sisterhood that provided hospital services to the community).[3]

2. *a.* Americans United does not make a serious attempt to rebut our demonstration (Br. 17-30) that

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[3] Americans United also attempts to stress the importance of granting it standing to sue by referring to the fact that the government has made other sales of surplus property to church-affiliated groups. For example, at about the same time that it sold property to Valley Forge Christian College, the government made sales to organizations such as the City of Hope National Medical Center (a provider of health care sponsored by a Jewish organization) and Loyola University (a provider of health care sponsored by a Roman Catholic organization). See C.A. App. 203. For the reasons summarized above, transfers such as these do not suggest a disregard of constitutional requirements. Indeed, Americans United concedes that the validity of such transfers "would depend on the specifics of each case" (Br. 12) and does not claim that the transfers were improper.

it does not have "taxpayer" standing under the specific standards articulated in *Flast* v. *Cohen*, *supra*, and subsequent decisions of this Court. Nor does it come to grips with our demonstration (Br. 30-45) that the "citizen" standing theory endorsed by the court of appeals in this case is inconsistent with *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, and *United States* v. *Richardson*, *supra*. Instead, Americans United advances a sweeping theory of standing to sue that would obliterate the restrictions prescribed in this Court's past opinions. It argues broadly that it may sue, without allegation of concrete personal injury, to vindicate the general "right to be free from religious establishment" (Br. 21). Thus, "every citizen" (*id.* at 25) is a proper plaintiff to challenge actions by the federal government deemed by the citizen to involve an improper benefit to or entanglement with religion. Amicus American Jewish Congress advances the same argument. In the view of amicus, the Establishment Clause "is an important ingredient of the quality of life in our society" (Br. 13), and embodies "a broad prophylactic rule against state sponsorship * * * of religion" (*id.* at 18). From this it follows, according to amicus, that "any citizen might well be able to challenge the gift at issue in this case" (*id.* at 25), since such a gift betokens "favoritism" and impairs the citizen's "rights to be free of such governmental action" (*id.* at 32).

If this reasoning were accepted, the Court's decisions in cases such as *Flast*, *Schlesinger* and *Richardson* would have to be abandoned. Any citizen, however situated, would be entitled to attack any transaction by the federal government with any church-related organization on the theory that the transaction betokened favoritism or impaired the citi-

zen's expectation of living in a society in which the government complies with the First Amendment.[4] Previously recognized prerequisites for standing to sue, such as the requirement that a taxpayer plaintiff allege congressional action under the taxing and spending power (as prescribed in *Flast*), or that a citizen plaintiff allege specific and non-abstract harm to himself (as prescribed in *Schlesinger* and *Richardson*), would be swept aside. As this Court emphasized in *Schlesinger* (418 U.S. at 227), "[t]he proposition that all constitutional provisions are enforceable by any citizen simply because citizens are the ultimate beneficiaries of those provisions has no boundaries."[5]

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[4] The implications of this theory can scarcely be overstated. For example, this theory of standing to sue would permit a separationist residing in California to sue to compel the federal government to repurchase a five-acre tract of land sold to a church-related college, hospital, or community recreational center in Rhode Island. As in the present case, the plaintiff could argue generally that the consideration for the sale was "constitutionally inadequate." For that matter, a separationist alleging an "incidental expenditure of tax funds in the administration of an essentially regulatory statute" (*Flast* v. *Cohen, supra*, 392 U.S. at 102) could claim that the challenged action deprived him of his "personal constitutional right to a government that does not establish religion" (Pet. App. A28-A29). The same claim could be advanced by a childless citizen complaining of religious exercises in school, even though *Doremus* v. *Board of Education*, 342 U.S. 429, 432-433 (1952), disapproved such claims.

[5] There is nothing in the First Amendment that exempts Establishment Clause litigation from the Article III "case or controversy" requirement. The fact that the Establishment Clause is contained in the Bill of Rights does not result in a displacement of the limitations of Article III. See *Doremus* v. *Board of Education, supra* (applying recognized principles of standing under the Establishment Clause). *Doremus* is cited

b. Americans United also suggests (Br. 22-23), without elaboration, that its members have a "spiritual stake" in the outcome of this litigation that is equivalent to the "aesthetic" or "conservational" interests recognized in other cases. Without reference to the complaint in this case, amicus American Jewish Congress also claims (Br. 13-24) that standing exists because the challenged governmental action, while not coercive, undermines the environment in which members of Americans United live and thus subtly affects their spiritual condition.

The difficulty with this line of argument is that the complaint does not allege, and the depositions and other record materials in no way indicate, how the challenged governmental action in this case could have any adverse effect on Americans United or its members.[6] There is no indication that the challenged

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with approval both in *Flast* v. *Cohen*, *supra*, 392 U.S. at 102, and *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S. at 225-226. *Flast* itself emphasized that "[a] taxpayer may or may not have the requisite personal stake in the outcome, depending upon the circumstances of the particular case" (392 U.S. at 101). See also *Abington School District* v. *Schempp*, 374 U.S. 203, 224 n.9 (1963): "It goes without saying that the laws and practices involved here can be challenged only by persons having standing to complain." Thus, this Court clearly and repeatedly has rejected the notion that the Establishment Clause can be enforced in federal court by any citizen claiming merely that government action beneficial to a religious organization involves "favoritism" or deprives the plaintiff of his right in common with all other citizens to "be free of such governmental action."

[6] Americans United states (Br. 31) that it has certain unidentified members living in Pennsylvania, the State where the land sale took place. See Binns Deposition of Mar. 7, 1978, at 20; Doerr Deposition of Mar. 7, 1978, at 27. However, neither the complaint nor the depositions indicate that any

sale interfered with worship or non-worship, imposed unwelcome ideas or orthodoxies on Americans United, or invaded the personal spiritual domain of its members in any other way. Thus, rather than alleging specific, non-abstract harm, Americans United returns to its general refrain that the Constitution prohibits what the government has done, and asserts that it therefore is entitled to litigate the propriety of the government's action. If accepted, that argument would remove standing as a constitutional prerequisite and would permit any plaintiff to proceed to an adjudication of the merits of his alleged claim.[7]

Pennsylvania member lived in the community involved or was affected in any way by the sale. See Binns Deposition, *supra*, at 20, stating that Binns was "indignant" because the Pennsylvania members "were not aware of the transaction," and that Americans United learned of the transaction only through "a press story." This testimony hardly suggests the existence of concrete personal injury. See *Warth* v. *Seldin*, *supra*, 422 U.S. at 501-502.

[7] Amicus American Jewish Congress suggests (Br. 20-23) that prior lower court decisions support standing to sue in this case. However, none of the cited cases lends substantial support to the standing theories advanced here. In *Aronow* v. *United States*, 432 F.2d 242, 243 (9th Cir. 1970), the district court found that the plaintiff did not have standing to challenge the propriety of inscribing the motto "In God We Trust" on currency. Finding the underlying constitutional claim to be frivolous, the court of appeals affirmed dismissal of the complaint on the merits, concluding that it was unnecessary to consider the issue of standing. Accord, *O'Hair* v. *Blumenthal*, 462 F. Supp. 19 (W.D. Tex. 1978).

Amicus also cites (Br. 22 n.*) a string of state court decisions dealing with religious displays, monuments, and statues erected on public property. In each of the cited state cases, the courts rejected Establishment Clause challenges to such religious displays. In none of the cited cases did the state

c. It is true, of course, that this Court has recognized that persons complaining of direct personal injury, distinct from economic injury, have standing to sue in appropriate cases. Thus, in *United States* v. *Students Challenging Regulatory Agency Procedures*

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court consider standing to sue. Moreover, as emphasized in *Doremus* v. *Board of Education, supra*, 342 U.S. at 434, state courts, unlike federal district courts, are not constrained by Article III of the Constitution and may issue "advisory" opinions beyond the jurisdiction of federal courts.

Whatever the vitality of *Anderson* v. *Salt Lake City Corp.*, 475 F.2d 29, 30-31 (10th Cir. 1973), following this Court's decisions in *Richardson* and *Schlesinger*, that case has no bearing on the issues presented in this case. In *Anderson*, the court of appeals rejected on the merits an Establishment Clause challenge to the erection of a religious display on public property. Standing to sue was found to be present because the plaintiffs were local users of the property in question and were subject to unwanted proselytism caused by the display. There is no similar allegation in the present case. In contrast to *Anderson*, Americans United does not claim that, in its capacity as a local resident and user of public property, it has become a captive audience for unwelcome religious messages.

The district court's decision in *American Civil Liberties Union of Georgia* v. *Rabun County Chamber of Commerce*, 510 F. Supp. 886, 890 (N.D. Ga. 1981), does agree with the standing theory of Americans United, but that decision is plainly inconsistent with prior rulings of this Court. There, the district court held that "the individual plaintiffs in the instant case gave testimony on their *concerns* with the separation of church and state, and this is sufficient to demonstrate standing to sue." *Ibid.*; emphasis added. For that proposition, the district court cited the Third Circuit's decision in the case now before this Court. The district court's unbounded definition of standing to sue cannot be reconciled with this Court's ruling that, in Establishment Clause cases, "[i]t is not a question of motivation[,] but of possession of the requisite * * * interest that is, or is threatened to be, injured by the unconstitutional conduct." *Doremus* v. *Board of Education, supra*, 342 U.S. at 435.

(*SCRAP*), 412 U.S. 669 (1973), the Court concluded that users of public recreational land in the District of Columbia had standing to complain of illegal governmental action impairing their ability to use and enjoy the public land. This ruling rested on an allegation of specific personal injury—"[the plaintiffs] point specifically to the allegations that their members used the forests, streams, mountains, and other resources in the Washington metropolitan area for camping, hiking, fishing, and sightseeing, and that this use was disturbed by the adverse environmental impact caused by [the challenged governmental action]" (*id.* at 685). The plaintiffs in *SCRAP* claimed that the challenged action of the government "would directly harm them in their use of the natural resources" (*id.* at 687), and they alleged "a specific and perceptible harm that distinguished them from other citizens who had not used the natural resources that were claimed to be affected" (*id.* at 689). Those allegations clearly separated the plaintiffs in *SCRAP* from concerned citizens "with a mere interest in the problem" (*id.* at 689 n.14).

In the present case, by contrast, the complaining parties have not alleged that the challenged governmental action actually impinges upon their lives. And their abstract claim, as set forth in their complaint, depositions, and briefs, cannot be distinguished from that which could be asserted by any other citizen who favors constitutional government. See *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S. at 223 (footnote omitted):

> It is one thing for a court to hear an individual's complaint * * * that individual enjoyment of certain natural resources has been impaired by [government] action (*United States* v. *SCRAP*, 412 U.S. 669, 687 (1973)), but it is another

> matter to allow a citizen to call on the courts to resolve abstract questions. The former provides the setting for a focused consideration of a concrete injury. In the latter, although allegations assert an arguable conflict with some limitation of the Constitution, it can be only a matter of speculation whether the claimed violation has caused concrete injury to the particular complainant.

In other words, "broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury." *Sierra Club* v. *Morton*, 405 U.S. 727, 738 (1972).[8]

d. Both Americans United (Br. 26-27) and amicus National Coalition for Public Education and Religious Liberty (Br. 10-13) argue that it is anomalous to deny the members of Americans United standing as taxpayers to challenge transfers of real estate when taxpayers may bring suit to challenge expenditures of money. The economic effect, they contend, of both kinds of governmental action is similar be-

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[8] *United States Parole Commission* v. *Geraghty*, 445 U.S. 388 (1980), cited by Americans United (Br. 21-22), holds only that a class representative in a class action may seek appellate review of an erroneous denial of class certification following expiration of his substantive claim. The Court emphasized, however, that "[a] named plaintiff whose claim expires may not continue to press the appeal on the merits until a class has been properly certified" (445 U.S. at 404). The procedural "right" of a class representative to obtain certification of a class (*id.* at 403), which in turn has a direct stake in the outcome of the litigation, differs fundamentally from the mere abstract "interest" that Americans United has in the outcome of this litigation. See *Sierra Club* v. *Morton*, *supra*, 405 U.S. at 739.

cause both property conveyances and disbursements of money have the potential to deplete the "assets" of the government. This rough equivalence argument, however, cannot be squared with *Flast*. *Flast* held in unequivocal terms that "a taxpayer will be a proper party to allege the unconstitutionality *only* of exercises of congressional power under the taxing and spending clause of Art. I, § 8, of the Constitution." 392 U.S. at 102 (emphasis supplied). As demonstrated in our opening brief (at 26-28), Americans United challenges action by Executive Department officials, not the enactment of any law by Congress, and the challenged action was taken pursuant to Article IV, Section 3—not Article I, Section 8—of the Constitution. This is fatal to an attempted taxpayer suit. See *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S. at 228; see also *id.* at 229 (Stewart, J., concurring); *United States* v. *Richardson*, *supra*, 418 U.S. at 174-175.[9]

Nor is there economic merit to the rough equivalence argument. A taxpayer action seeking to enjoin appropriations and expenditures by Congress under the taxing and spending power puts a halt to financial disbursements and, *pro tanto*, preserves the wealth of the government. "The impact on federal taxpayers in such cases is conceptually direct, even

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[9] Without explanation, Americans United refers to its purported taxpayer grievance as an inhibition of "freedom of conscience." Thus, the challenged government action assertedly forced members of Americans United "to give support to someone else's religion" (Br. 24). However, the interest of an individual taxpayer in the aggregate funds or assets of the government is "indeterminable" and "remote" (*Doremus* v. *Board of Education*, *supra*, 342 U.S. at 433-434). Accordingly, taxpayer standing to challenge an expenditure on Establishment Clause grounds exists only if the standards of *Flast* are satisfied.

though the dollar-and-cents consequence for a taxpayer is minimal." *Public Citizen, Inc.* v. *Simon*, 539 F.2d 211, 218 (D.C. Cir. 1976). By contrast, an action seeking to compel the government to resume ownership of surplus property, to make arrangements for another disposition of that property, and to maintain the property in the interim, is most likely to deplete rather than to preserve the wealth of the government.[10] Thus, there is no "logical nexus" between taxpayer status and Americans United's claim that the government improperly has disposed of surplus property. *United States* v. *Richardson*, *supra*, 418 U.S. at 175.

3. Americans United also contends (Br. 11-12, 18-19, 29-30) that denial of standing in this case would "remove from judicial scrutiny a substantial portion of constitutional abuses" and would be a prescription for lax enforcement of the Establishment Clause. That result, it is asserted, would be inconsistent with the importance and dignity of the Establishment Clause in our constitutional scheme. We quite agree that the Establishment Clause is an important constitutional provision and should vigorously be enforced. But it can be enforced in federal court only as permitted by Article III of the Constitution.

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[10] Current high interest rates and shortages of funds in non-profit institutions underscore this economic proposition. If the federal government were compelled to resume ownership of the 77-acre tract of land here in question, and were compelled to attempt to locate a new buyer of the property—property encumbered with surplus military buildings that would require demolition or substantial renovation—there is no assurance that a prompt resale could be arranged. The substantial cost to the government of maintaining the property, and of exploring the prospects for a resale, could easily exceed the sale price ultimately obtained for the surplus property. (See our opening brief at 22 n.11.)

Moreover, application of traditional standing requirements to Establishment Clause cases is not a prescription for lax enforcement. In any case in which the plaintiff challenges disbursements under a law passed by Congress pursuant to the Taxing and Spending Clause, standing exists within the rules prescribed in *Flast* v. *Cohen*, *supra*. Similarly, in any case in which government action causes economic injury to the plaintiff or exposes him to legal sanctions, this Court's decisions recognize standing to sue. See *McGowan* v. *Maryland*, 366 U.S. 420, 430-431 (1961); *Two Guys from Harrison-Allentown* v. *McGinley*, 366 U.S. 582, 585-586, 592 (1961); *Board of Education* v. *Allen*, 392 U.S. 236, 241 n.5 (1968). Finally, in cases in which the plaintiff alleges with specificity that governmental action in violation of the Establishment Clause imposes unwanted religious ideas, or invades the domain of personal spiritual liberty, standing to sue is recognized without proof of actual coercion. See *Abington School District* v. *Schempp*, 374 U.S. 203, 224 n.9 (1963).[11]

Standing does not exist, however, when the complaining party alleges no direct and identifiable injury to himself as a consequence of the asserted unconstitutional action of the government. General claims that the government has failed to abide by the Constitution or has deprived the plaintiff of his right in common with all other citizens to live under a government that adheres to constitutional standards do not satisfy the Article III standing requirement.

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[11] See also *Stone* v. *Graham*, 449 U.S. 39 (1980), involving the practice of posting religious materials in school classrooms. The plaintiffs in *Stone* included impressionable students, who were subjected to these unwelcome religious messages from the government, as well as their parents. See *Stone* v. *Graham*, 599 S.W.2d 157, 159 (Ky. 1980).

Doremus v. *Board of Education*, *supra*, 342 U.S. at 434-435, quoted in *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S. at 225-226.

Thus, our submission in this case recognizes that judicial remedies are available for persons alleging Establishment Clause violations in all categories of cases in which judicial remedies traditionally have been afforded. When an individual citizen alleges concrete personal harm that can be rectified by a specific judicial decree, federal courts properly may undertake the weighty responsibility of adjudicating the constitutional propriety of the conduct of a coequal branch of government. But in the absence of such allegations, the remedy lies with the Legislative and Executive branches. See *United States* v. *Richardson*, *supra*, 418 U.S. at 179 ("[i]n a very real sense, the absence of any particular individual or class to litigate these claims gives support to the argument that the subject matter is committed to the surveillance of Congress, and ultimately to the political process"). Disregard of this limitation would only serve to "create the potential for abuse of the judicial process, distort the role of the judiciary in its relationship to the Executive and the Legislature and open the Judiciary to an arguable charge of providing 'government by injunction.'" *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S. at 222.[12]

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[12] As explained in our opening brief (at 43 n.26), strict adherence to these limitations is particularly important in challenges based on the Establishment Clause, because "virtually every contact between the government and a religious institution potentially raises an Establishment Clause violation." For example, Americans United asserts (Br. 13) that the violation in this case arose not from "the Government's decision to declare the property surplus and to sell it" to

4. Finally, Americans United claims (Br. 31-32) that standing should be recognized in this case because it has a "national role in church-state litigation," has certain members who find the governmental action in question in this case to be "especially repugnant," and has "the knowledge and resources to present sincerely and responsibly to the courts a vigorously argued case." However, the decisions of this Court repeatedly have held that "mere 'interest in a problem', no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem," is not sufficient to confer standing to sue. *Sierra Club* v. *Morton*, *supra*, 405 U.S. at 739. "Emotional involvement in a lawsuit is not enough to meet the case-or-controversy requirement * * *." *Ashcroft* v. *Mattis*, 431 U.S. 171, 173 (1977). In other words, "[i]t is not a question of motivation," but possession of the requisite personal

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Valley Forge Christian College, but from the alleged inadequacy of the compensation paid by the college. Hence, courts would be required to engage in difficult and necessarily subjective valuation proceedings, at the behest of any citizen, to resolve the numerous First Amendment challenges that would surely follow from the abrogation of the standing doctrine in this class of cases.

Of course, our submission that, in the absence of an actual case of controversy, Establishment Clause grievances should be presented to the Legislative and Executive branches does not disparage the high rank that the Establishment Clause occupies in our constitutional system (compare Americans United Br. 24). When individual interests are impinged upon by governmental action in violation of the Establishment Clause, we agree with Americans United that the judiciary should be quick to entertain complaints (*id.* at 28-30). When Article III minima are not present, however, the Establishment Clause must vigorously be enforced by the political branches, which also are obligated to uphold the Constitution.

stake in the controversy that is dispositive in analyzing standing to sue. *Doremus* v. *Board of Education*, *supra*, 342 U.S. at 435. Moreover, as this Court emphasized in *Schlesinger* v. *Reservists Committee to Stop the War*, *supra*, 418 U.S. at 227: "[t]he assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing." [13]

Nor is Americans United aided in claiming standing to sue by reference (see Br. 25-27) to the Administrative Procedure Act, 5 U.S.C. 702.[14] Parties seeking to invoke the judicial process under the Administrative Procedure Act must satisfy the Article III case or controversy requirement. See *Sierra Club* v. *Morton*, *supra*, 405 U.S. 734-741; *United States* v. *SCRAP*, *supra*, 412 U.S. at 686-689; see generally *Califano* v. *Sanders*, 430 U.S. 99, 104-107 (1977).[15] The case or controversy requirement, recognized under both Article III of the Constitution and the Administrative Procedure Act, "prevents the judicial process from becoming no more than a vehicle for the

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[13] Beyond this, other potential plaintiffs, with better claims to standing to sue, may well be available to test the substantive legal issues that Americans United seeks to litigate. (See our opening brief at 41-42 n.24.)

[14] Americans United did not argue in the court of appeals or the district court that the Administrative Procedure Act alters the rules of standing applicable to this litigation, and the courts below did not pass on any such contention. That argument, therefore, is not properly presented in this Court. *United States* v. *Santana*, 427 U.S. 38, 41 n.2 (1976); *Adickes* v. *Kress & Co.*, 398 U.S. 144, 147 n.2 (1970).

[15] Moreover, prudential limits on standing to sue are also applicable under the Administrative Procedure Act. See *Control Data Corp.* v. *Baldrige*, Nos. 80-1143, *et al.* (D.C. Cir. Mar. 25, 1981), slip op. 12-30 (collecting cases), petition for cert. pending, No. 80-2175 (filed June 23, 1981).

vindication of the value interests of concerned bystanders." *United States* v. *SCRAP*, *supra*, 412 U.S. at 687. Americans United falls into the category of a "concerned bystander" because it has failed to allege specific concrete injury to itself that could be remedied through a judicial decree in its favor.

In any event, the Administrative Procedure Act grants standing only to persons "adversely affected or aggrieved by agency action *within the meaning of a relevant statute* * * *" (5 U.S.C. 702) (emphasis added). The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471 *et seq.*, was not intended to grant enforceable rights to persons complaining of a disposition of public property (cf. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 127-128 (1940)), and, indeed, Americans United's amended complaint does not even allege a violation of the statute (J.A. 11).

For the foregoing reasons and the reasons stated in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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SEPTEMBER 1981

☆ U. S. GOVERNMENT PRINTING OFFICE: 1981 354930 623

No. 80-327

Office-Supreme Court, U.S.
FILED
JUN 23 1981
ALEXANDER L. STEVAS,

IN THE

Supreme Court of the United States

October Term, 1980

VALLEY FORGE CHRISTIAN COLLEGE,

Petitioner,

and

THE UNITED STATES DEPARTMENT OF EDUCATION, THE UNITED STATES OF AMERICA,

Federal Respondents,

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ANDREW LEIGH GUNN, EDWARD E. DOERR, GIOELE SETTEMBRINI, and E. MALLARY BINNS,

Respondents.

On a Writ of *Certiorari* to the United States Court of Appeals for the Third Circuit

BRIEF OF THE AMERICAN JEWISH CONGRESS ON BEHALF OF ITSELF, THE SYNAGOGUE COUNCIL OF AMERICA AND THE NATIONAL JEWISH COMMUNITY RELATIONS COUNCIL, *AMICI CURIAE*

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QUESTION PRESENTED

Whether the Court of Appeals correctly held that respondents had standing to challenge, under the Establishment Clause of the First Amendment, a gift of surplus government property to an allegedly sectarian educational institution?

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INTEREST OF THE AMICI

This brief amici curiae is submitted with the consent of the parties by the American Jewish Congress on behalf of itself, The Synagogue Council of America and The National Jewish Community Relations Council.

The American Jewish Congress is a membership organization of American Jews founded in 1918 to protect the religious, political and economic rights of Jews and to promote the principles of democracy. It is committed to the preservation of the great freedoms secured by the First Amendment, and especially the unitary freedoms secured by its Establishment and Free Exercise Clauses.

The Synagogue Council of America is a co-ordinating body consisting of the organizations representing the three divi-

sions of Jewish religious life: Orthodox, Conservative and Reform. It is composed of:

Central Conference of American Rabbis, representing the Reform rabbinate;

Rabbinical Assembly, representing the Conservative rabbinate;

Rabbinical Council of America, representing the Orthodox rabbinate;

Union of American Hebrew Congregations, representing the Reform congregations;

Union of Orthodox Jewish Congregations of America, representing the Orthodox Congregations;

United Synagogue of America, representing the Conservative congregations.

The National Jewish Community Relations Advisory Council is a policy-forming and coordinating body for national and local Jewish organizations concerned with community relations. The constituent organizations of the Council are the American Jewish Congress, American

Organization for Rehabilitation and Training (ORT), Anti-Defamation League of B'nai B'rith, Hadassah, Jewish Labor Committee, Jewish War Veterans of the United States, National Council of Jewish Women, Union of American Hebrew Congregations, Union of Orthodox Jewish Congregations of America, and the United Synagogue of America and the 108 local Jewish Community Councils, representing most communities with significant Jewish populations. The organizations affiliated with the National Jewish Community Relations Advisory Council include in their membership the overwhelming majority of American Jews.

The organizations submitting this brief are committed to the belief that the separation of church and state is essential for the preservation of religious liberty.

It has proved of inestimable value both to religion and to the community generally. Although the organizations signing this brief do not always agree on the precise location of the "wall" between church and state, they agree that the standing issue before this Court in this case is of critical importance to the ability of religious minorities to adequately protect their rights to religious freedom under the religion clauses of the First Amendment.

STATEMENT OF THE CASE

This action was brought in July 1977 by the respondents Americans United for Separation of Church and State* and several of its staff members as individuals (hence-

* Americans United is a non-profit organization devoted to maintaining the separation of church and state. It sued on behalf of itself and its members.

forth referred to collectively as Americans United) to require the then Secretary of Health, Education and Welfare to rescind a transfer of surplus government property to petitioner Valley Forge Christian College made approximately one year earlier pursuant to the Federal Property and Administrative Services Act. 40 U.S.C. § 484(k).

The complaint alleged that Valley Forge Christian College (henceforth petitioners or Valley Forge) was a sectarian institution to which the government could not give financial aid consistent with the Establishment Clause, and that the transfer to it of property valued at over one million dollars constituted such financial aid.

The petitioners, together with HEW, which was also named as a defendant, denied that the transfer violated the Establishment

Clause. As an additional defense, Valley Forge and the government challenged respondents' standing to bring this action.

The District Court found that Americans United did not have taxpayer standing because the transfer of surplus federal property was not an exercise of the spending power under Article I § 8 of the Constitution but rather Congress' power, under Article 4 § 3 cl. 2 "to dispose of ... property belonging to the United States." Relying on Flast v. Cohen, 392 U.S. 83 (1968) the District Court dismissed the suit for want of standing, without considering other possible grounds for finding the existence of standing.

The Court of Appeals for the Third Circuit reversed, 619 F.2d 252 (3rd Cir. 1980). While it agreed that Americans

United did not have taxpayer standing to challenge the transfer, it held that it did have standing to challenge any action of government which infringed on its members' individual rights to the non-establishment of religion.

This Court granted certiorari on February 21, 1981.

SUMMARY OF ARGUMENT

When their claim is analyzed in light of this Court's Establishment Clause jurisprudence, the respondents satisfy both the constitutional and prudential elements of the traditional standing doctrine without regard to theories of taxpayer or citizens' standing. Constitutional standing requires only a showing of injury in fact, attributable to the actions of the defendants. In this case, respondents allege that the gift

of surplus government property improperly infringes on their individual right to be free of governmentally established religion. Those allegations are sufficient to create a case or controversy in the Article III sense.

This Court has also enunciated prudential considerations for determining the existence of standing. It has never held that these considerations may be invoked in cases alleging violations of the individual rights created by the first eight Amendments to the Constitution. In adopting a Bill of Rights, the Founders intended to create rights which could be enforced in the courts. It would therefore be inappropriate for these prudential considerations to be applied here to bar this suit. Even should those considerations be applicable, they

are no bar to the instant lawsuit. Respondents seek to assert their own rights and do not come before the courts merely with a generalized interest in the subject matter.

ARGUMENT

The standing of the respondents to challenge the transfer of surplus property to an allegedly sectarian college is based on now well settled principles. Their standing does not depend on theories of taxpayer or citizens' standing, but on traditional concepts of standing. Respondents' standing to challenge governmental acts which allegedly establish religion by actions other than the expenditure of tax funds is merely an application of the "injury in fact" standard to the somewhat unusual injury prohibited by the Establish-

ment Clause.

I. Respondents Have Constitutional Standing

A. Introduction

The law of standing, as it has evolved since this Court's seminal decisions in Flast v. Cohen, 392 U.S. 83 (1968), and Ass'n of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970), has two distinct aspects. The first, of constitutional dimension, insures that a party seeking to invoke federal court jurisdiction has a "case or controversy" with the defendant. Gladstone Realtors, Inc. v. Village of Bellwood, 441 U.S. 91 (1979).

The other aspect of the doctrine involves "prudential principles" under which "the judiciary seeks to avoid deciding questions of broad social import where no individual rights would be vindicated and

to limit access to the federal courts to those litigants best suited to assert a particular claim" Gladstone Realtors, Inc. v. Village of Bellwood, supra, 441 U.S. at 99-100 (emphasis added); Warth v. Seldin, 422 U.S. 490, 499-500 (1975). As we show below, both of these aspects of the standing doctrine are satisfied by the respondents. This conclusion rests not only on the straight forward application of these rules to the instant case, but also on the underlying separation of powers principle which has given rise to this two part test.

This Court's recent standing decisions have emphasized the importance of the standing doctrine in insuring that the courts play only their assigned role in a democratic political system. See, e.g., Gladstone Realtors, Inc. v. Village of Bell-

wood, supra, 441 U.S. at 99; Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 37-38 (1976); Flast v. Cohen, supra, 392 U.S. at 94-95. That same concern mandates that a liberal view of standing obtain in Establishment Clause cases, for, as we demonstrate below, it is the courts which, while not alone charged with observance of the Constitution in general, Missouri, Kansas & Texas Railway Co. v. May, 194 U.S. 267, 270 (1904), or the Establishment Clause in particular, must ultimately insure compliance with the supreme law of the land.

B. Respondents' Interest in Remedying a Violation of their Individual Right to Non-Establishment is Sufficient to Confer Constitutional Standing

The constitutional "minima" of standing is that of injury in fact caused by the challenged actions of the defendant. See,

Gladstone Realtors, Inc. v. Village of Bellwood, supra. The injury need not be a tangible economic one. Injury to intangible or abstract interests, such as an individual's interest in a clean and healthy environment, are sufficient to sustain standing, U. S. v. SCRAP, 412 U.S. 669 (1973), for "[a]esthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society...." Sierra Club v. Morton, 405 U.S. 727, 734 (1972)

Non-establishment plays an important part in ensuring religious liberty. No less than "environmental well being," it is an important ingredient of the quality of life in our society. It is not surprising, therefore, that this Court has identified an individual's interest in protecting his

right to non-establishment as sufficient to confer standing. "[A] person ..., may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause, School District of Abington Twshp. v. Schempp, 374 U.S. 203 (1963)." Ass'n of Data Processing Service Organizations v. Camp, supra, 397 U.S. at 154. Although this holding may well be dispositive here, this Court need not now rest on stare decisis alone, for an analysis of the law of standing in light of Establishment Clause principles confirms its correctness.

The mere existence of an illegal act does not be itself confer standing. In order to have standing a plaintiff must "be himself among the injured."* Sierra Club v.

Morton, supra, 405 U.S. at 735. Whether a plaintiff has himself suffered an injury requires a preliminary inquiry into the nature of the right asserted. U. S. v Richardson. 418 U.S. 166, 174 (1974).

The first eight amendments to the Constitution, of which the right to non-establishment is one, not only set limits on the exercise of governmental power or assign particular tasks to the respective branches of government; they create individual rights, which the judiciary can enforce even to the extent of creating appropriate remedies. See, e.g., Carlson v. Green, 446 U.S. 14 (1980) (8th Amendment); Davis v. Passman, 442 U.S. 228 (1979) (5th

* A plaintiff must also show a causal relationship between the injury and the acts of the defendant, see Warth v. Seldin, supra, but that aspect of standing is easily satisfied here.

Amendment); Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971) (4th Amendment). Bell v. Hood, 327 U.S. 678, 684 (1946); Dellums v. Powell, 566 F.2d 167, 194-95 (D.C. Cir. 1977) (1st Amendment).

Implicit in the incorporation of the Establishment Clause into the Due Process Clause of the Fourteenth Amendment is a recognition that the Establishment Clause protects an individual's liberty and is not merely a limitation on the power of government, as is the case, for example, with the incompatibility clause. Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208 (1974).

In explaining this Court's rejection of the claim that the Establishment Clause was not incorporated into the Due Process Clause of the Fourteenth Amendment because

it does not protect individual rights, Justice Brennan has written:

> [T]he Establishment Clause [is] a co-guarantor, with the Free Exercise Clause, of religious liberty. The Framers did not entrust the liberty of religious beliefs to either clause alone. The Free Exercise Clause "was not to be the full extent of the Amendment's guarantee of freedom from governmental intrusion in matters of faith." (citation omitted)

School District of Abington Twshp. v. Schempp, supra, 374 U.S. at 256. (Brennan, J., concurring opinion). This plainly correct view was endorsed by the Court below, Americans United v. U. S. Dept. of H.E.W, supra, 619 F.2d at 265, and lies at the heart of its decision.

It is true that the Establishment Clause does protect against a form of harm different in kind from most constitutional

injuries. Constitutional injury, as with most other forms of legally cognizable injury, normally involves pecuniary or physical harm, or some restriction on a person's political freedom or civil rights. Coercion of one type or another is thus common to these forms of injury.

By contrast, coercion is not an element of an Establishment Clause violation. School District of Abington Twshp. v. Schempp, supra, 374 U.S. at 223. Standing to challenge a violation of the Clause does not depend upon a showing that plaintiff's right to religious freedom was infringed. School District of Abington Twshp. v. Schempp, supra, 374 U.S. at 224 n.9. The Establishment Clause embodies a broad prophylactic rule against state sponsorship or subsidization of religion, and it prohibits

steps on the road to an established church. Lemon v. Kurtzman, 403 U.S. 602, 612 (1971).

The Establishment Clause was intended to, and does, prohibit government practices which appear to endorse religion, Stone v. Graham, 101 S. Ct. 192 (1980), for the Founders were convinced that such endorsements result in an atmosphere inevitably inconsistent with religious freedom. They therefore insisted that government remain scrupulously neutral in matters of religion. Judged by these standards, respondents' claim that the gift of the property to Valley Forge Christian College breaches the government's duty of neutrality and impinges on their right to full and complete religious liberty is surely sufficient for purposes of standing.*

* The Establishment Clause is applicable to every

Recognizing that any departure from neutrality is prohibited by the First Amendment, the lower courts have rejected the argument that the special nature of Establishment violations renders them immune to judicial challenge. They have permitted individuals to challenge governmental actions which arguably "pollute the atmosphere" of neutrality in a wide variety of contexts, including at least one which the government states [Brief at 33] cannot properly be the basis for suit because no

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act of Congress, whether it has its source in Article I, § 8, or some other section of the Constitution, including Article 4, § 3, cl. 2. This Court has so held, Reynolds v. U. S., 98 U.S. 145, 152 (1878); cf. Downes v. Bidwell, 182 U.S. 244, 277 (1901).

It is unnecessary for this Court to decide, and amici express no view as to whether a governmental gift of surplus property to an allegedly sectarian institution of higher education in fact unconstitutionally establishes religion.

one has standing to challenge it. Aronow v. U. S., 432 F.2d 242 (9th Cir. 1970) ("In God We Trust" on coins); O'Hair v. Blumenthal, 462 F.Supp 19 (W.D. Texas 1978) aff'd, 588 F.2d 1144 (5th Cir. 1979).

The federal and state courts have repeatedly entertained, on the merits, challenges to the display of religious symbols on public property, in cases not involving governmental expenditures. As the Tenth Circuit put it in Anderson v. Salt Lake City Corp., 475 F.2d 29, 31 (10th Cir. 1973), a challenge to the placement of a religious monument erected with private funds on public property:

> But we think the requisite standing is clearly conferred by non-economic religious values when the plaintiffs assert a litigible interest under the Establishment and Free Exercise Clauses of the Federal Constitution. E.g.,

Allen v. Hickel, 424 F.2d 944, 946 (D.C. Cir. 1970).*

* Accord, A.C.L.U. of Georgia v. Rabun County Chamber of Commerce, Inc., F.Supp. , C79-2035A (N.D. Ga. 1980); Lowe v. City of Eugene, 254 Or. 518, 459 P.2d 222 (1969) cert. denied, 397 U.S. 1042 (1970), on petition to modify judgment sub nom Eugene Sand and Gravel, Inc. v. City of Eugene, 276 Or. 1007, 558 P.2d 338 (1976) cert. denied, 434 U.S. 876 (1977) (cross in park); Paul v. Dade County, 202 So.2d 833 (Fla. App. 1967) (cross near courthouse); State ex rel Singlemann v. Morrison, 57 So.2d 238 (La. App. 1952 (state constitution) (statue in public park); Lawrence v. Buchmueller, 40 Misc.2d 300, 243 N.Y.S.2d 87 (S. Ct. 1963) (creche on public land); Baer v. Kolmorgen, 14 Misc.2d 955, 170 N.Y.S.2d 40 (S. Ct. 1957) (creche on public land). Contra: Brashich v. Port Authority, 484 F.Supp. 697 (S.D.N.Y. 1979) aff'd without published opinion, 628 F.2d 1344 (2nd Cir. 1980). However, it should be noted that, in affirming the decision, the Second Circuit refused to endorse the District Court's holding on the standing issue.

> The Third Circuit's recent decision in Americans United for Separation of Church and State, Inc. v. United States Department of Health, Education and Welfare, No. 79-1221 (3d Cir. April 8, 1980) casts substantial doubt upon the district court's determination that appellant lacks standing to sue. The court there held that alleged injury to a non-economic concern for the separation of church and state conferred stand-

Petitioner Valley Forge recognizes, as it must, that standing exists to redress violations of the right "to live ... in 'a religion free environment.'"*

In view of the scope of the Establishment Clause, several Justices of this Court have indicated a greater willingness to countenance actions under the Establishment Clause than claims arising under other provisions of the Constitution. See Simon v. Eastern Kentucky Welfare Rights Organization, supra, 426 U.S. at 46 (Stewart, J. concurring); Flast v. Cohen, supra, 392 U.S.

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ing upon a nonprofit corporation dedicated to advancing this principle to challenge transfers of land by H.E.W. to religious groups at less than fair market value. See Anderson v. Salt Lake City Corp., 475 F.2d 29 (10th Cir. 1973).

* More accurately, of course, what is involved is the right to live in an environment free of governmentally sponsored and sanctioned religion. Insistence on an environment free of private religious influence would manifest impermissible hostility toward religion.

at 114 (Stewart, J. concurring); Id at 115 (Fortas, J. concurring). What Valley Forge fails to recognize is that the subsidy of religion arguably involved here just as surely implicates that right as do religious symbols on public property.

II. Prudential Considerations Do Not Require a Reversal of the Judgment

In addition to the constitutional requirements for standing, this Court has developed a series of prudential considerations for determining the existence of standing. None of these is a barrier to standing here, even on the assumption -- not supported by this Court's cases -- that prudential considerations can ever bar a claim seeking to vindicate individual rights. See Gladstone Realtors, Inc. v. Village of Bellwood, supra, 441 U.S. at 99-100; Warth

v. Seldin, supra, 422 U.S. at 500.

The first of these considerations is that, ordinarily, the courts will not consider

> "generalized grievance[s]" shared in substantially equal measure by all or a large class of citizens .... E.g., Schlesinger v. Reservists to Stop the War, supra; U. S. v. Richardson, supra; Ex Parte Levitt, 302 U.S. 633, 634 (1937).

Warth v. Seldin, supra, 422 U.S. at 499. The government [Brief at 29-33] makes much of these cases which they deem controlling here, since it is quite true that, if the respondents' position is sustained, any citizen might well be able to challenge the gift at issue in this case.

Nevertheless, this Court has also

> made it clear that standing is not to be denied simply because many people suffer the same injury.... To

> deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody. We cannot accept that conclusion.

U. S. v. SCRAP, supra, 412 U.S. at 687-88. Not surprisingly, the government's brief chooses to pass over this holding in silence.

The apparent conflict between these lines of authority is more apparent than real. In each of the cases in the first group, the plaintiff sought to undo a violation of one of the Constitution's "housekeeping" provisions, which did not result in any harm to the plaintiff other than that suffered by the system (and therefore all citizens as "shareholders" in the system) generally.

By contrast, SCRAP involved a challenge to a governmental action which affected every individual, not merely as a member of the body politic, but as an individual harmed by the actions of another -- although the "other" is the government, and the class of persons injured was co-terminous with the class of all citizens.

This case closely resembles SCRAP, but, because it involves claimed violations of constitutional rights, it presents an even more compelling case for standing. Respondents have suffered individual constitutional harm as the direct result of the actions of the federal government. That millions of others suffer the same harm does not in any way minimize the fact that respondents allege individual harm. Respondents are therefore entitled to a judicial

forum to test the merits of their case.

Underlying the decisions in cases such as Schlesinger, Richardson and Ex Parte Levitt is the perceived need for the judiciary to avoid entanglement in disputes which the political process is capable of resolving -- frequently without the difficulties which a court would face in framing relief. Contrary to the government's suggestion [Brief at 40-42], experience teaches that violations of individual rights are not likely to be resolved in the political process, which, indeed, is most often the source of the violation.*

* The Government goes to great lengths [Brief at 41] to demonstrate that Congress would intervene if federal properties of great importance and value were given to sectarian institutions. The argument is quite beside the point, even assuming that assertion were susceptible to proof. If gifts of surplus property to sectarian institutions violate the Constitution, they would appear to do so, at least for purposes of standing, regardless of whether the gift is the Naval Observatory or, as here, a surplus veterans hospital.

More to the point, it does not much matter whether our view of the government's view of the political process is correct. It was precisely because the states which ratified the Constitution did not wish to entrust their most precious liberties to the majoritarian political process, a Bill of Rights was drafted and adopted:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to * * * freedom of worship * * * and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943) (emphasis added).*

* It is worth noting that the government quotes

The Bill of Rights thus has a procedural aspect -- access to the Courts -- absent from those provisions of the Constitution giving rise to the Richardson, Schlesinger and Levitt cases. See also Bell v. Hood, supra, 327 U.S. at 684.

Allowing standing here would not open the Courts to suits by persons with merely a generalized interest in the subject matter who might be interested in attacking every arguable violation of the Establishment Clause. The injury in fact requirement would remain, and it would serve to exclude those who are not injured by a practice which allegedly establishes religion. Thus, a resident of New York would not ordinarily have standing to chal-

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[Brief at 40, n.22] the second sentence ("One's right....) but not the first sentence (the very purpose) which indicates that it is the Courts which are to protect these rights.

lenge the erection of a cross in a Georgia state park, for he is in no way injured by the presence of the cross. But a Georgia resident would -- and should -- have standing even if no governmental funds are involved, and even if he is not compelled to attend the park, ACLU v. Rabun County Chamber of Commerce, supra; Allen v. Hickel, supra; for a government with authority over him is breaching its duty of neutrality in matters of religion by permitting the erection of a religious symbol on public property.

Respondents here are challenging action by the national government which, they allege, indicates favoritism by that government -- to which they owe allegiance and which has authority over them -- to one particular faith in violation of their indi-

vidual rights to be free of such governmental action. Prudential standing rules were not designed to, and should not, bar ligigation of this claim.

None of the other prudential considerations are applicable here. Respondents are seeking to assert their own rights, not those of any person not before the Court. Warth v. Seldin, supra. Nor is there any better party, with more immediate interests as is the case, for example, with religious practices in the public schools. For this reason alone, Doremus v. Bd. of Public Education, 342 U.S. 429 (1952), is distinguishable, even if recent developments in the law of standing and non-establishment have not undermined the validity of that decision as it applies to the facts of this case.

The "better party" aspect of prudential standing is not an open ended invitation to the Courts to refuse to adjudicate cases otherwise within their jurisdiction merely because there may be some person more directly affected than the party seeking to invoke the jurisdiction of the Court. Rather it is designed to insure that the issues are presented in an adversarial posture, Warth v. Seldin, supra. For this limited purpose, it suffices that the party was directly affected as are the respondents.

Finally, we note that this case presents a typical controversy appropriate for judicial resolution. Challenges to government's gifts of property or financial assistance to private institutions are not un-

precedented, whether under the Establishment Clause, Harder v. Town of Ridgefield, 47 LW 2597 (Conn. Super. 1979) or under some other rule of law. See, e.g. Wein v. N. Y., 39 N.Y.2d 136, 383 N.Y.S.2d 225, 347 N.E. 2d 586 (1976) (state constitutional provision forbidding gifts of public money); Foster v. Medical Care Comm'n, 283 N.C. 110, 195 S.E.2d 517 (1973) (same); Fort Sanders Presbyterian Hospital v. Health and Educational Facilities Bd., 453 S.W.2d 771 (Tenn. 1970) (same); Truitt v. Bd. of Public Works, 243 Md. 375, 221 A.2d 370 (1966) (same). In short, even if prudential considerations can ever bar a claimed violation of individual rights, none of the factors enunciated by this Court calls for the courts to abstain from deciding this controversy. The remedy sought --

recission -- is surely common, and would not place the judiciary in the position of determining broad questions of social policy, as was the case in Warth v. Seldin, supra, and Simon v. Eastern Kentucky Welfare Rights Organization.

CONCLUSION

For the reasons stated, the judgment should be affirmed.

Respectfully submitted,

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No. 80-327

Office-Supreme Court, U.S.
FILED
JUN 1 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1980

VALLEY FORGE CHRISTIAN COLLEGE,

Petitioner,

v.

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF NATIONAL COALITION FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, NEW YORK COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY and FLORENCE FLAST, AMICI CURIAE

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The Interest of the Amici

This brief is submitted in behalf of the National Coalition for Public Education and Religious Liberty (National PEARL), the New York Committee for Public Education

and Religious Liberty (New York PEARL) and Florence Flast.

National PEARL is a coalition of national organizations, sharing the common objectives of preserving religious freedom and the separation of church and state in the arena of education.[1]

New York PEARL, the predecessor and now a constituent of National PEARL, is organized for the same purpose. It has acted as a co-plaintiff in a number of suits involving the establishment and free exercise clauses in the educational arena.[2]

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1. The constituents of National PEARL are: American Association of School Administrators; American Civil Liberties Union; ACLU National Capital Area; ACLU of Connecticut; American Ethical Union; American Humanist Association; American Jewish Congress; Americans United for Separation of Church and State; Anti-Defamation League of B'nai B'rith; Baptist Joint Committee on Public Affairs; Board of Church and Society of the United Methodist Church; Central Conference of American Rabbis; Illinois PEARL; Minnesota Civil Liberties Union; Missouri Baptist Christian Life Commission; Missouri PEARL; New York PEARL; Monroe County, New York PEARL; Nassau-Suffolk PEARL; Michigan Council Against Parochiaid; National Association of Catholic Laity; National Council of Jewish Women; National Education Association; National Women's Conference, American Ethical Union; Preserve Our Public Schools; Public Funds for Public Schools of New Jersey; New York State United Teachers; Ohio Free Schools Association; Union of American Hebrew Congregations; Unitarian Universalist Association.

Americans United for Separation of Church and State is a respondent in this case and is submitting its own brief in that capacity. We have been informed by the American Jewish Congress that it will submit its own brief amicus herein.

2. The constituents of New York PEARL are: American Ethical Union; Americans for Democratic Action; Americans for Public Schools; American Jewish Committee, New York Chapter; American Jewish Congress; A. Philip Randolph Institute; Association of Reform Rabbis of New York City and Vicinity; B'nai B'rith; Bronx

(footnote continued on next page)

Florence Flast is a citizen and a taxpayer in the United States of America. She is a vice-president of National PEARL and chairman of New York PEARL. In her individual capacity she was the lead plaintiff in the case of *Flast* v. *Cohen*, 392 U.S. 83 (1968), which established that the courts will not readily sanction a grave impairment of the First Amendment's Establishment Clause predicated upon a claim of immunity from judicial review.

The amici herein are committed to the integrity of that Clause. They are committed no less to the meaningful survival of the American public school system, which, together with the principle of church-state separation, are the nation's most significant contributions to contemporary civilization. Because they believe that the integrity and meaningful survival of both would be endangered were the courts to be held impotent to accord appropriate relief in the situation presented in the instant case, they have joined in respectfully submitting the within brief for this Court's consideration.

Park Community; Citizens Union of the City of New York; City Club of New York; Community Church of New York; Community Service Society, Department of Public Affairs; Council of Churches of the City of New York; Episcopal Diocese of L. I., Department of Christian Social Relations; Humanist Society of Greater New York; Jewish Reconstructionist Foundation; Jewish War Veterans, New York Department; League for Industrial Democracy, New York City Chapter; National Council of Jewish Women; National Women's Conference of The American Ethical Union; New York Civil Liberties Union; New York Federation of Reform Synagogues; New York Jewish Labor Committee; New York Society for Ethical Culture; New York State Americans United for Separation of Church and State; New York State Council of Churches; State Congress of Parents and Teachers, New York City District; Union of American Hebrew Congregations, New York State Council; Unitarian-Universalist Ministers Association of Metropolitan New York; United Community Centers; United Federation of Teachers; United Parents Association; United Synagogue of America, New York Metropolitan Region; Women's City Club of New York; Workmen's Circle, New York Division.

Statement of the Case

The complaint in this case alleges that the United States had conveyed 77 acres of land and buildings to the Valley Forge Christian College, that the college was basically a religious institution, that religion pervades its instruction, and that the grant therefore violated the Establishment Clause of the First Amendment. The complaint sought judgment declaring the grant to be void and ordering return of the property to the United States Government.

On motion of the defendants, the district court dismissed the complaint on the ground that plaintiffs lacked standing to sue under *Flast* v. *Cohen*, 392 U.S. 83 (1968), in that the challenge was to a transaction of property under Article IV, Section 3, Clause 2, of the Constitution and not to an exercise of Congress' power to tax and spend.

The court of appeals reversed on the ground that while plaintiffs lacked standing in their capacity as taxpayers, they could sue in their capacity as citizens seeking to redress their rights under the Establishment Clause of the First Amendment.

Thereafter, this Court granted certiorari to review the decision of the court of appeals.

Question to Which This Brief Is Addressed

The single question considered in this brief is whether a patently unconstitutional grant of governmental property to a church for religious use is immune from judicial review by reason of a claimed lack of standing on the part of the plaintiffs in the suit.

Summary of Argument

The unconstitutionality of the governmental action challenged herein is hardly open to question. As a practical and realistic matter unavailability of a suit by citizens and taxpayers would to that extent make a mockery of the declaration in Article VI that the Constitution is the Supreme Law of the land.

Prior decisions of this Court do not mandate such a result. On the contrary, denial of standing on the part of the appellees herein could well negate the Court's decisions ruling unconstitutional governmental grants of funds to religious institutions simply by making the grant in the form not of money but of property easily convertible into money.

This Court need not and should not construe Article III of the Constitution as precluding the courts' jurisdiction of suits by citizen-taxpayers aimed at flagrant violations of at least the spending power under Article I, Section 8. But irrespective of this, the court of appeals was correct in holding that "the Establishment Clause does create in every citizen a personal constitutional right, such that any citizen, including taxpayers, may contest under that clause the constitutionality of federal expenditures."[3]

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3. Americans United for Separation of Church and State v. United States Department of Health, Education and Welfare, 617 F. 2d 252 (3d Cir. 1980).

ARGUMENT

1. The Constitutional Question

We recognize that the issue presented to the Court at this stage of the litigation is one of jurisdiction rather than the substantive merits of the underlying lawsuit. We suggest, however, for reasons to appear shortly, that a brief consideration of the constitutional issue is pertinent at this point.

There is, we submit, little doubt that the government's gift to the Valley Forge Christian College of property exceeding a million dollars in value cannot be reconciled with the mandate of the First Amendment's Establishment Clause. No better authority for this proposition can be expected than the author of the Clause, James Madison. Madison, as President, vetoed a bill giving certain land to a Baptist Church, stating as his reason therefor, that

> . . . the bill in reserving a certain parcel of land of the United States for the use of said Baptist Church comprises a principle and a precedent for the appropriation of funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that "Congress shall make no law respecting a religious establishment."[4]

(It should be noted that in respect to the substantive issue, Madison used the term "parcel of land" and "funds" interchangeably.)

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4. J. Richardson, Messages and Papers of the Presidents (1900) I, p. 490.

Nor is there any doubt that Madison assumed accessibility to the courts to remedy such a violation of the Constitution. If a bill of rights, he had said, were

> . . . incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an inpenetrable bulwark against any assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights.[5]

Nothing in the many decisions of the Court involving aid to religious educational institutions indicates any inkling of or intent to distinguish between grants of money and grants of land. Were the contested transaction in this case an appropriation of money rather than of real property, there could be little question as to its unconstitutionality. Certainly it would be action in aid of religion within the prohibition of the Establishment Clause as construed in *Everson* v. *Board of Education,* 330 U.S. 1 (1947). Nor could it survive a challenge to invalidation under the purpose-effect-entanglement test announced in *Walz* v. *Tax Commission,* 397 U.S. 604 (1970) and applied in its numerous progeny beginning with *Lemon* v. *Kurtzman,* 403 U.S. 602 (1977).[6]

In the first place, its purpose is obviously to advance religion. While the Court has indicated a reluctance to

5. Annals of Congress, Vol. I, 1st Cong., 1st and 2nd Sess. p. 439; quoted in C. Hughes, The Supreme Court of the United States (1927) p. 160.

6. See, Levitt v. Committee for Public Education and Religious Liberty, 413 U.S. 472 (1973); Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973); Meek v. Pittenger, 421 U.S. 349 (1975); Wolman v. Walter, 433 U.S. 229 (1977).

find impermissible purpose in cases challenging grants to church related educational institutions,[7] it is difficult to find any other purpose in respect to the grant here in issue. The College can hardly claim that it has any major purpose other than the advancement of the Christian religion. Indeed, it makes that fact abundantly clear to its students and prospective students.[8] The suit herein does not challenge the constitutionality of the underlying surplus property statute.[9] It challenges only the specific gift made to the College, action having no purpose other than the advancement of religion, thus clearly distinguishing the present situation from those involved in the *Lemon* and post-*Lemon* cases.

There is even less doubt that the effect of the challenged action is the advancement of the Christian religion as taught and inculcated in the College. Financing of an institution whose curriculum is devoted to Bible study, Christian service, and theology, and which makes mandatory attendance at daily chapel service and regular participation in Christian activities could hardly have any other effect.

Finally, the record clearly establishes the presence of constitutionally forbidden entanglement of church and state.

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7. See, *e.g.*, Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. at 773 (1973). It has found no such difficulty in respect to other governmental action in aid of religion. See, Epperson v. Arkansas, 393 U.S. 97 (1968) (proscription of evolution); Stone v. Graham, 101 S. Ct. 192 (1980) (posting of Ten Commandments in public schools). See also, McGowan v. Maryland, 366 U.S. 420 at 453 (1961).

8. See Respondents' Brief in Opposition to Petition for Certiorari, pp. 5-7.

9. Federal Property and Administrative Services Act of 1949, 40 U.S.C. Sec. 471 *et seq.* (1970).

The deed to the College requires it to file reports on the operation and maintenance of the property and "such other pertinent data evidencing continuing use of the property for the specific purpose specified in the property application." In *Lemon*, the Court held that the continuing governmental surveillance required to make sure that the statutory beneficiary does not inculcate the doctrines and faith does itself effect impermissible entanglement. 403 U.S. at 619. The present case presents the converse of that situation; it requires continuing surveillance to assure that the granted property *is* used to effect that constitutionally impermissible purpose.[10]

One further comment on the substantive issue is appropriate. In footnote 9 on page 5 of its petition for certiorari, the College states:

> . . . Judge Adams wrote: "The Valley Forge Christian College is admittedly sectarian". The "admission" to which the Court refers is certainly not one of the Petitioners . . . For a college to be "sectarian" or "church-related" is hardly co-extensive with "religion" as used in the Establishment Clause. See Roemer v. Board of Public Works of Maryland, 426 U.S. 736 (1970); Hunt v. McNair, 413 U.S. 734 (1973); Tilton v. Richardson, 403 U.S. 672 (1971).

10. The only situation analogous to the present one (*i.e.*, entanglement through governmental action to make sure that the First Amendment *is* violated) that we have been able to find is in the case of Anderson v. Laird, 437 F. 2d 912 (7th Cir.) cert. denied 404 U.S. 865 (1972). There the Court of Appeals held unconstitutional compulsory chapel attendance at government military academies on the ground, *inter alia*, that while the cadets were in church they were subject to continuing surveillance by each other and by superior officers to make sure they were giving sufficient attention to the praying in the church.

The meaning of the footnote is not quite clear; the second and last sentences seem to be contradictory. More important, however, is the fact that the cited cases stand for propositions directly opposite to those here asserted by the Church. *Tilton* and *McNair* held that government financing of buildings constructed in church-related colleges is constitutionally permissible *only* if the building is to be used for exclusively secular purposes; in the present case the buildings are to be used *only for religious purposes.* In *Roemer,* the Court upheld grants to be used for nonsectarian purposes only if the aided colleges were not "pervasively sectarian." Obviously, the exact opposite is the case here.

2. Taxing and Spending

We turn now to the basic question raised in the present status of the litigation, that of standing to sue, and the assumed limitation of jurisdiction to instances involving exercise of the taxing and spending power conferred by Article I, Section 8 of the Constitution. The starting point of consideration is, of course, the decision in *Flast* v. *Cohen.* Emphasis is placed by the Church upon the following sentences:

> Thus, a taxpayer will be a proper party to allege the unconstitutionality only of exercise of congressional power under the taxing and spending clause of Art. I, Sec. 8 of the Constitution. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute. . . . Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this require-

> ment, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, Sec. 8. 392 U.S. at 102-103.

Initially it should be pointed out that under *Flast* there would be no question of standing had the government granted to the Church the money required to purchase the land and buildings here in issue and the Church thereupon used the same money to effect the purchase; *Flast* v. *Cohen* establishes this. It has also been previously noted herein that Madison's veto message respecting the grant of land to a Baptist church used the terms "parcel of land" and "funds" interchangeably. It is difficult to believe that Madison, who played so active a role in drafting not only the First Amendment but also the Constitution itself, and his colleagues in Congress who approved both, agreed to a device that could be so simply used by a determined Congress and compliant members of the President's cabinet to nullify the constitutional ban on governmental financing of churches and church schools.

We suggest that neither the taxing and spending clause in Article I, Section 8 nor its construction in *Flast* impels such a conclusion. The taxing and spending power, we submit, is implicated in the present case no less than it was in *Flast*. The Church here is exempt from taxation neither more nor less than those operating the parochial schools in *Flast*. The funds sought to be used to finance parochial school operations in *Flast* had originally become part of the national treasury through the same taxing

procedure as the funds used to acquire the realty involved in this case. In both cases assets acquired by the government through taxation of all persons, irrespective of their religion or lack of religion, were turned over to institutions for no reason other than their religious operations.

The transfer of assets to the beneficiary of the challenged legislation in this case was conditioned on their being used to advance religion no less in this case than in *Flast*. Indeed, it is even more so in the present case. In *Flast*, the subject matter taught—arithmetic, reading, geography, etc.—though impregnated with religion through the manner by which they were taught, was basically secular. In the present case only religion, pure and simple, was taught; the titles of the degrees available—Ministerial Program, Missionary Program, Christian Education Program and Bible Concentration Program—testify to this.

It is no answer that the institutional beneficiary in the present case supplies the religious education to post-secondary school students while the plaintiffs in *Flast* challenged the Elementary and Secondary Education Act of 1965. *Tilton* v. *Richardson* and its progeny made it quite clear that tax-raised funds cannot constitutionally be used to finance theological seminaries, which, of course, cater only to college or post-college students.

We suggest further that the District Court was in error in asserting that plaintiffs lack standing in the present suit by reason of Article IV, Sec. 3, Cl. 2 in the Constitution, which provides that "Congress shall have power to dispose of and make all needful rules and regulations respecting

the territory or other property belonging to the United States." Even if the power to regulate encompasses making a gift of that which is regulated, it obviously does not sanction gifts which, as Madison held, violate the Constitution. Obviously, the Clause cannot be deemed to override the subsequently adopted First Amendment. It is therefore difficult to read into the Clause a ban on suits seeking to enjoin such an unconstitutional act. In any event, it certainly cannot be construed to exclude jurisdiction in respect to a suit which, as we have sought to show, is encompassed within the taxing and spending power.

3. Citizen's Standing

Independent of status as taxpayers, we submit that the court below was correct in holding that the plaintiffs herein have standing to bring the present suit by reason of their status as citizens of the United States. As noted in the Court of Appeals' opinion herein,[11] in *Flast* the plaintiffs in their brief to this Court asserted not only a "pocketbook injury," but also "an injury to the right to live under a government which separates itself from the church and church affairs." The lead pleantiff in that case, Florence Flast, is also one of the amici to the present brief, and, although an officer in each of the organizational amici herein, is also acting in her status not only as a taxpayer but no less as a citizen of the United States.

The amount of monetary damage suffered by her as an individual taxpayer was realistically within the *de minimis* category. Would her standing have been vulnerable had she been below minimum income tax liability? Indeed, a

11. Petition for certiorari, p. 19a fn. 51.

strong argument can be made for the converse of the argument asserted by the Church herein. It is the financially underprivileged who suffer most when public funds are diverted from their basic function of financing public education and are given to religious schools which they cannot enter because of their own religious conscience.

The *de minimis rule*, we suggest, has no application to the restraints imposed by the Establishment Clause, and should not constitute a barrier to a citizen's suit challenging its violation. Ordinarily the monetary loss suffered by a taxpayer as result of a slight waste of public funds may be too insignificant to warrant invoking the judicial process to obtain redress. In respect, however, to matters of religious liberty and separation of church and state, the quantity of the monetary appropriation is without significance. When the government makes any appropriation, no matter how slight, for religious purposes, religion has come within the cognizance of civil government. Madison well recognized this when he warned:

> That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever.[12]

It is, we submit, the fact, not the extent, of governmental aid which controls.

In *McCollum* v. *Board of Education of Champaign, Illinois*, 333 U.S. 203 (1948), a suit challenging religious

12. Memorial and Remonstrance Against Religious Assessments, appendix to Justice Rutledge's dissenting opinion in Everson v. Board of Education, 330 U.S. 1 at 65-66 (1947).

instruction in the public schools conducted by unpaid volunteers, the Court rejected a claim, accepted by the Illinois state court, that the expenses incurred by the public school system (wear and tear on furniture, electric current on dark days, etc.) were so slight as to fall within the *de minimis* rule and the courts, including this Court, were without jurisdiction. In *Engel* v. *Vitale*, 370 U.S. 421 (1968) and *Abington School District* v. *Schempp*, 374 U.S. 206 (1963), the Court accepted jurisdiction in suits challenging the constitutionality under the Establishment Clause of prayer recitation and devotional Bible reading in the public schools; and in *Stone* v. *Graham*, 101 S.Ct. 192 (1980), it did the same in respect to suits challenging the posting of the Ten Commandments on the walls of public school classrooms.

In none of these cases was there any expenditure of taxpayers' funds. Indeed, in *Stone* the legislature of Kentucky made a special effort to avoid judicial invalidation by mandating that all expenses for the posting of the Commandments must come from voluntary contributions so that no expenditure of tax-raised funds would be involved. True enough, all of these cases concerned expenditures, or more accurately non-expenditure of state rather than Federal funds so that the taxing and spending provisions of Article I were not directly implicated. Yet, it is difficult to believe that the result in any of these cases would have been different if they had involved the public schools in the District of Columbia rather than Illinois, New York, Pennsylvania or Kentucky.[13]

13. *Cf.* Hurd v. Hodge, 334 U.S. 24 (1948); Bolling v. Sharpe, 347 U.S. 477 (1957).

The crux of the matter and the teaching of these cases is that there is a vital citizens' interest, going beyond that of a taxpayer, in assuring that the government of the United States should not itself be guilty of flagrantly violating the First Amendment to our Constitution. As the court of appeals noted in its opinion (at p. A 27), the challenged gift of government property to a church seriously injures the plaintiffs' individual and personal constitutional right of religious liberty and church-state separation. This right belongs to all citizens, not merely those who are taxpayers, and even as to them it is a right far more precious than the loss of a few dollars as taxpayers.

It is no answer to urge that if the people do not like what Congress is doing, they can elect a new Congress which will be more faithful to the Constitution. The court of appeals was again correct in quoting the statement in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1943) that fundamental First Amendment rights "depend on the outcome of no election" and are "beyond the reach of majorities." *Ibid.* at 638.

Nor is it an adequate response that if the people do not like a judicial decision, they can change the Constitution through amendment. The Constitution as it now reads is quite clear that the government may not make a gift of public property to a church, and no additional language is needed to rectify any possible ambiguity. The problem does not lie in constitutional language but in Congressmen's readiness, for political reasons, to disregard constitutional limitations. The Court can judicially note the efforts in Congress to bring prayer back into the public

schools by means of statutory limitations on the judicial power to review. It is unrealistic to assume that similar efforts will not be made even if the Constitution were amended to expressly confer judicial jurisdiction in cases such as that now before the Court.

4. National Policy and Constitutional Supremacy

The Constitution is the supreme law of the land, and all officials, Federal and state, executive and legislative swear to uphold it. This is what the pupils in our schools are taught, as they are taught that interpretation of the Constitution is the function of the judiciary. And they are also taught that the Constitution forbids use of tax-raised funds to finance religious schools, and certainly that governmental assets, whether in the form of money or property, may not be turned over as gifts to churches.

Particularly relevant here is the following statement of Justice Brandeis in *Olmstead* v. *United States* (277 U.S. 438 at 485 [1928] [dissent]):

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of law, existence of government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill it teaches the whole people.

The law forbids what the government has done in the present case, yet having done so the law, it is argued, is impotent to redress the wrong done to the Constitution and the American people. The lesson that inevitably comes

from this is that oath of office or not, the Constitution can be violated if Congress so wills, and the judiciary is helpless. One can hardly expect our school pupils and their parents to come to any conclusion other than that violation of law is perfectly all right if you can get away with it.

The Court in *Frothingham* v. *Mellon,* 262 U.S. 447 (1923), expressed a fear that allowing taxpayers to sue might open the door of federal courts to countless suits "in respect of every other appropriation act and statute whose administrations requires the outlay of public money, and whose validity may be questioned." *Ibid.* at 487. The same argument was urged in *Flast,* but was found insufficient to justify a finding that allowing taxpayers' suits under the Establishment Clause would have the same crippling effect upon the federal judicial system.

Thirteen years of experience under *Flast* establishes that there was no realistic basis for that fear. During that period, the Court found it necessary only once, in *Tilton* v. *Richardson,* 403 U.S. 672 (1971), to adjudicate constitutionality in respect to a federal grant of money. There is, we suggest, no reason to fear that allowing taxpayers or citizens to challenge judicially federal grants in the form of tangible property other than money will have a more deleterious effect upon our judicial system.

In *Wolman* v. *Waters,* 433 U.S. 229 (1977), the Court did not indicate any fear that allowing taxpayers to challenge under the Establishment Clause grants, in any or all of the 50 state, of non-monetary materials (such as teaching equipment, non-returnable books) would impose an intolerable burden upon the federal courts. It is difficult to see

why a remedy should be denied where the grant is made in the District of Columbia. *Hurd* v. *Hodge,* 334 U.S. 24 (1948) and *Bolling* v. *Sharp,* 347 U.S. 477 (1957), impel a contrary determination.

Constitutional supremacy, we respectfully submit, is our national policy, and should not be weakened by sanctioning so flagrant a violation as is manifest in the present case.

Conclusion

For the reasons stated, the decision of the Court of Appeals should be affirmed.[14]

Respectfully submitted,

/s/ Leo Pfeffer

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14. There is no need for the Court at this stage of the proceedings to adjudge what effect a decision of affirmance should have in respect to governmental grants of property made before the present suit was instituted. Resolution of possibly conflicting equities should await a determination of the merits.